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ABSTRACT

The minutes of the meeting of the Special Committee on Aging of the U.S. Senate on the issue of legal services programs for the elderly, specifically programs in effect in the Boston area include statements made by the following: (1) an elderly diabetic woman testifying about living conditions and lack of services in her housing project; (2) the chief paralegal coordinator, Council of Elders Legal Service Program, Boston, MA on the use of paralegals to further assist in the legal problems of the elderly; (3) the President of the Legislative Council for Older Americans, Boston, MA on the legal needs of the elderly; (4) the State Director of the National Retired Teachers Association of the American Association of Retired Persons, Hyannis, MA on the unique legal problems of the elderly; (5) the Director of the Nursing Home Ombudsman Project, Department of Elder Affairs, Commonwealth of Massachusetts, Boston, MA on the legal status of nursing home patients; and other program directors and private citizens describing legal problems they have encountered. (SJT)

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IMPROVING LEGAL REPRESENTATION FOR OLDER AMERICANS

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HEARING

BEFORE THE

SPECIAL COMMITTEE ON AGING, UNITED STATES SENATE

NINETY-FOURTH CONGRESS

SECOND SESSION

PART 2—BOSTON, MASS.

AUGUST 30, 1976

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Improving Legal Representation for Older Americans:
Part 1. Los Angeles, Calif., June 14, 1974.
Part 2. Boston, Mass., August 30, 1976.
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IMPROVING LEGAL REPRESENTATION FOR OLDER AMERICANS

MONDAY, AUGUST 30, 1976

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Boston, Mass.

The committee met, pursuant to notice, at 10 a.m., at Gardner Auditorium, Boston, Mass., Hon. Edward M. Kennedy presiding.

Present: Senator Edward M. Kennedy.

Also present: David A. Affeldt, chief counsel; Deborah K. Kilmer, professional staff member; Mark Schneider, legislative assistant to Senator Kennedy; Margaret S. Fayé, minority professional staff member; and Kathryn T. Dann, assistant chief clerk.

OPENING STATEMENT BY SENATOR EDWARD M. KENNEDY, PRESIDING

Senator KENNEDY. We will come to order. This is a meeting of the Special Committee on Aging of the U.S. Senate on the issue of legal services programs for the elderly people of this Nation and on the programs that are in effect which impact elderly people here in the Greater Boston area and also in the State of Massachusetts. It is of great importance to the Committee on Aging that elderly people know their legal rights, have their legal rights protected, and take full advantage of this Nation's legal system.

There is probably no group of citizens of our Nation who have a relationship with their State government, their local government, or their national Government like our elderly people. They are the ones who have paid into a social security system for an extended period of time and they are entitled to the system's benefits. Therefore, they have a stake in insuring that they are able to get the benefits they have paid for, and which they are entitled to. In too many instances, they have not received those benefits. Sometimes the supplemental insurance programs may have been calculated to exclude them from the benefits to which they are entitled.

How many problems do our elderly people have in computing their own income to find out whether they are eligible for free housing or for supplemental housing benefits? Shouldn't elderly people be protected from utilities being turned off in their housing unit, from their rents being raised arbitrarily without sufficient notification, or from being unable to enter or exit a building because it does not have special ramps for the handicapped?

There are innumerable circumstances where our legal system must protect the elderly. The Older Americans Act, which is now law, requires that appropriations be made to develop legal assistance for the elderly. That provision was put into the Older Americans Act as a result of a hearing that we held here 5 years ago. Perhaps some of the witnesses who testified then, will be testifying today. We also have a Legal Service Corporation which has a budget of approximately $125 million. It was explicit in the drafting of the charter for the Legal Service Corporation that it protect the rights of our elderly people. In 3 weeks, the Senate will be faced with what is called a rescission. President Ford and the Office of Management and Budget are going to say we have got $45 million we don't need to expend because there isn't a demand for it. Now, I don't believe that to be so, and when I stand on the floor of the U.S. Senate, I want to be able to bring to my colleagues in the U.S. Senate testimony from today's hearing which will point to instance after instance where individuals' legal rights have not been protected and where they have been protected. Where they think that either the Legal Service Corporation or the other organizations committed to protecting the legal rights of our elderly people can function more effectively and more efficiently, with more paralegal personnel, and perhaps additional lawyers.

I want to welcome those who will testify here today. In many instances they are old friends. They have been extremely articulate and persuasive spokespersons for the elderly people, not only of the Greater Boston area, but for the elderly people of our State and of our Nation. We are looking forward to their comments and suggestions.

I will make a part of the record the statements we have by Congressman—and Majority Leader—Thomas P. O'Neill, Jr., Congressman Joseph D. Early, Congressman James A. Burke, Congressman Joe Moakley, and Congressman Paul E. Tsongas.

[The statements follow:]

STATEMENT OF CONGRESSMAN (AND MAJORITY LEADER) THOMAS P. O'NEILL, JR.

As Congressman and now as the House Majority Leader, I have always had a deep and compassionate concern for the well being of the elderly of this commonwealth and the Nation. I have continually worked to improve the lives of our senior citizens, enabling them to live in both comfort and dignity.

In fact, the reason why I cannot personally be present at this hearing and have asked my legislative assistant to submit this statement on my behalf is because I must be in Washington to offer an amendment, the O'Neill Amendment to the Supplemental Security Income (SSI) Amendments of 1976. The O'Neill Amendment, which is the first order of business on the House floor today, will affect the lives of many of the senior citizens who are attending this hearing.

As you all know, supplemental security assistance provides a basic cash income to people over 65 who are in financial need. The O'Neill Amendment will have the effect of guaranteeing that future cost of living increases are passed through to the recipients. A recent change in the share of Federal/State contribution meant that approximately 130,000 SSI recipients never received the SSI increases to which they were entitled this year. My amendment will correct this discrepancy so that such an injustice can never happen again.

I offered a similar amendment to the first budget resolution which put a guarantee in the social security laws that enables benefits to keep pace with inflation. Thus, whenever the cost of living increases 4 percent or more in 1 year, your social security check will increase automatically the following July if you

have not already received the increase through congressional action. This means that your purchasing power will be protected against increases in the cost of living in the future.

I want to heartily commend Senator Kennedy for holding the hearing here today to determine ways in which the Government can improve legal representation for older Americans. I firmly believe that the Federal Government has a significant and dramatic role in the task of creating a life of dignity for older Americans.

It was more than 10 years ago that the Congress created the Older Americans Act, landmark legislation which developed community services to put more meaning into the lives of the senior citizens. Included in this act was a bill of rights for older Americans which sought efficient community services whenever needed.

Through the Older Americans Act we have developed programs to meet the nutritional, health, social, and economic demands of older Americans. Now, we must build upon these bills of rights and add an 11th bill of rights—improving the availability and accessibility of legal services to senior citizens.

The Older Americans Act amendments that we passed this Congress contained, as one of its four priorities, the availability of legal services. There is a need for legal services for the elderly and a need for review of existing programs.

Already grants for research and demonstration projects are in operation. For instance, in 1975, Massachusetts received a grant of $18,385 for a State nursing home ombudsman, to process legal complaints for nursing home inmates, and in the same year, the State received $377,000 for administration of the older Americans program planning. Massachusetts also received $2.3 million for area planning in social services and community services.

States are required to adopt a plan of providing legal representation to qualify for Federal funds. No specific guidelines for eligibility are yet in existence. But these initial undertakings are only a commencement. We must improve legal representation for older Americans.

The purpose of this hearing is to determine how we can best improve the availability of legal services for the 22 million elderly in this nation. Nearly 30 percent of the senior citizens in the country are living on or below the poverty line. Yet, they receive less than 7 percent of the legal services provided by the Legal Services Corporation. I think we need to press for a change of direction in the allocation of funding of legal services.

I wholeheartedly support the objectives of this hearing, and may I assure all of you here that I will urge Chairman Randall and the members of the House Committee on Aging to explore ways in which we can improve upon the legal representation of the elderly through the State agencies which implement the Older Americans Act.

The Congress of the United States has a commitment to aid the elderly in this country. We must build upon the bill of rights set forth in the Older Americans Act and continue to develop benevolent and innovative programs as well as improve existing programs for our senior citizens. This is our goal, and all of you participating in this hearing can work with us to make this objective a reality.

STATEMENT OF CONGRESSMAN JOSEPH D. EARLY

I appreciate this opportunity to address the Senate Committee on Aging, and I want to especially thank Chairman Frank Church and my distinguished colleague from Massachusetts, Senator Edward Kennedy, for their commendable dedication to the work of the Committee on Aging.

Older Americans are clearly one of the most discriminated against minorities in American society. We do not reward our elder citizens for their years of contribution, but penalize them, regardless of their contribution, for growing older. We force them out of the work force despite their abilities, energies and experience. We relegate them to "retirement" and place them in a position where their usefulness and their vast wealth of knowledge are left to waste. Worse, the majority of these senior citizens are totally dependent on income far below a subsistence level. They are stripped of the human dignity they have strived for by a system that no longer recognizes them as assets.

We have created a psychological and economic monster by our misguided attitudes and policies toward the aging. Not only do these attitudes and policies destroy a potential in our elder citizens to be productive contributors—to control

their own lives and destinies and to continue to enhance our American democracy with their years of experience and their unique perspectives on the future—but, they rob the rest of us of the benefits of tapping those experiences and perspectives to improve our own lives, our working society and our social future. Truly, what we have done to older Americans is a terrible loss to us all.

The Older Americans Act states 10 objectives to assist older people to secure the full and free enjoyment of our Democratic society: an adequate income; the best possible physical and mental health; suitable housing; full restorative services; employment without age discrimination; retirement in health, honor, and dignity; participation in civic, cultural, and recreational activities; community services; immediate benefits from research; and freedom and independence. Reaching these objectives will be no easy road. Our country—its political figures, its economic leaders, and its general population—in establishing priorities, both social and economic, all too often listen to the loudest voice without thought to the direction that voice may take them. Our society has become more and more fast paced and simultaneously less and less stable. Crime has increased tenfold in the past 20 years. The divorce rate in this country is now about two-to-one and climbing. Our cities are bankrupt and our rural communities are being starved by the neglect of Federal and State governments to insure equal services. More and more of our earned incomes are going to Federal, State, and local taxes and fewer and fewer services are evident to show for that investment. This is the society that we are asking to reassess its disposition toward Older Americans. And, the battles ahead strike the core of our domestic instability. We want medical services available at reasonable costs. We want equal opportunities in the work force. We want this Nation to face the reality that aging is a process, but a growing process that should be recognized as such and dealt with at every level with respect and dignity.

That the law discriminates against the elderly is probably the most symptomatic of our attitudes as a society. It implies that we, as a Nation, fear aging and fear the aged for what they represent—our own destinies. As we have seen, to a large degree, with racial discrimination in this country, the law is the place to start. Changing the laws to guarantee equal treatment of the elderly will begin the process by which attitudes will be changed. The essential in improving legal representation for older Americans is the willingness of older Americans themselves to demand representation. There are many of us who stand ready to help, assist, and direct the attention of these demands—but there is not one of us who can restore senior citizens to their rightful place of participation in this Nation alone.

The Committee on Aging has been largely responsible for calling national attention to many of the needs of older Americans. Again, I want to thank Chairman Church and Senator Kennedy for allowing me to submit this statement for the record. The committee has my full support and I stand ready to assist, in any way I can, to promote equal and equitable treatment of the elderly under the law.

STATEMENT OF CONGRESSMAN JAMES A. BURKE

Today there are over 20 million Americans who are age 65 or older. Over the past several years the Federal Government has increased its commitment to improving the quality of life for our elderly citizens, in addition to numerous liberalizations in the Social Security and SSI programs. A major thrust of federal action has been the Older Americans Act which under the 1975 amendments provides the impetus for addressing many of the social service needs of the elderly. However, one need which continues to go unheeded for great numbers of the elderly is effective access to legal advice, counseling and representation.

For those with the means, if a legal problem arises in their daily lives, they have the financial resources to seek out the services of an attorney. But that choice is not readily available to a large segment of the elderly. One in every four elderly families lives on less than $5,000 annually. More than 50 percent of old people living alone live on less than $3,000 a year. People over 65 make up about 16 percent of the poverty population. Most of these people rely on social security or SSI.

Many of the elderly, of course, receive free legal services from federal programs administered by the Legal Services Corporation and the Administration on Aging, but the resources of those programs are not sufficient to reach the potential clientele to be served. Although the elderly comprise 16 percent of the

nation's 24 million poor, it is estimated by the Legal Services Corporation that they comprise only 6 percent of the client caseload of an average Legal Services Corporation grantee.

Even for those elderly citizens with middle class incomes, the prospects for obtaining needed legal services are not good. Typically, these are the people who are too "rich" to be considered eligible for free legal services from one of the Legal Service Corporation offices even though they are too "poor" to afford an attorney.

The elderly face a myriad of legal problems for which they are in persistent need for legal advice, counseling and representation. The elderly encounter not only general legal problems but many other special problems involving age, discrimination in employment, probate, pensions, long-term hospitalization, and nursing homes. In addition, the complexity of federal laws and regulations in such programs as Social Security, SSI, Medicare, Medicaid, Railroad Retirement, and Veterans Pensions, often requires the assistance of lawyers or paraprofessionals trained in the area.

It is important that more of our elderly citizens fully understand their legal rights in matters which affect their daily lives and have fuller access to legal representation. I am encouraged by the recent increase in appropriations for the Legal Services Corporation and am hopeful that the expansion of their program effort will include increased coverage for the elderly poor. The increased efforts of the Administration on Aging in the development of legal services capability for serving the elderly is also encouraging. I am particularly interested in their efforts to expand the use of trained paralegals and lay advocates as a means of creating opportunities for trained older persons to take an active role in the provision of legal assistance to other older persons.

Although increased efforts must be continued at the federal level, it is also necessary to encourage fuller participation by the private bar. The legal profession is becoming increasingly aware of its responsibility for helping to improve the availability of legal services to those unable to afford their services and I am hopeful that they will address their efforts to the needs of the elderly.

The hearings today will hopefully enable the committee to focus on the current problems and lay the groundwork for determining the directions that must be taken to insure that the legal needs of older Americans are met.

Throughout my entire career in the U.S. Congress, the needs of the elderly have been of special interest to me. Now, as chairman of the Social Security Subcommittee of the House Committee on Ways and Means, I am continuing my active role to secure for our senior citizens the means for them to live their lives with the dignity and security they so rightfully deserve.

Thank you, Mr. Chairman.

STATEMENT OF CONGRESSMAN JOE MOAKLEY

Today we are finally realizing the magnitude of the legal needs of millions of older Americans—needs which have been sadly neglected in the past. At this time in our Nation's history, there are more people past the age of 65 than ever before 650,000 in Massachusetts alone. Notwithstanding, these citizens' basic legal needs have not been fully addressed, making a fundamental precept of our Nation, "equal justice under law."

Many of the elderly lead productive lives. Many others are burdened with health, transportation, nutrition, and housing problems. Many are poor. Many live on limited incomes which often forces them to rely upon complex public and private institutions for their daily subsistence. Yet, they are not capable of dealing with the many legal aspects of this maze of governmental agencies and bureaucracies upon which they are so heavily dependent.

For example, their shelter may be provided or secured under federal and state public and subsidized housing laws, relocation laws, environmental protection laws, and zoning laws.

Their health is often dependent upon medicare, medicaid, laws regulating nursing homes, and laws relating to the advertisement of prescription drugs.

Their nutrition is often secured by the food stamp program.

The source of their income may be social security, supplemental security income, or private pensions.

The dignity of personal freedom and control of property is subject to the vagaries of the law of guardianship, conservatorship and involuntary commitment. Furthermore, the elderly also have numerous consumer and landlord-

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tenant difficulties, legal difficulties which are shared by all age groups. In fact, hardly any facet of the lives of our elderly may not be helped by legal representation.

While the elderly are, on the one hand, confronted with a vast complex of crucial legal issues, bureaucracies, and forms with which to deal, on the other hand, they have no real place to turn for effective economic and personal assistance. Many of the elderly are not adept at coping with the governmental system and are unable to deal with issues of a legal nature. Yet, it was noted by Paul Nathanson, executive director of the National Senior Citizens Law Center, "There is often no one available to explain the technical language of Federal regulations, or the requirements for witnessing a will, or the qualifications to be met in a pension plan, or the tax implications of retirement programs." Many of these "legal" problems require lawyers' help, but others require only that competent paralegal or nonlegal advice be available. But even nonlegal help is oftentimes inaccessible to our elderly, some of whom are physically unable to leave their homes or convalescent centers or are without transportation; without information about where to find help when help is needed; without the understanding of the fact that they need help; and most importantly, without the income capability to pay attorney's retainer fees. The situation of the nondestitute elderly, with respect to legal representation, is perhaps even more acute than that of the elderly poor, because they have too much income or resources to qualify for free legal services and yet, cannot afford to hire a private attorney.

Clearly, the need of our senior citizen's for legal service is pressing. However, for all but a small fraction of the elderly, the legal system is beyond reach. It is our responsibility to expand the provision of legal services to the elderly by all appropriate means. No society can properly claim that it is governed by a system of law when millions of its citizens are denied access to the legal system because they are past the age of 65.

STATEMENT OF CONGRESSMAN PAUL E. TSONGAS

Senator Kennedy, and members of the Senate Committee on Aging, thank you for inviting me to submit testimony concerning "Improving Legal Representation for Older Americans."

My office has maintained a close working relationship with agencies, such as Merrimack Valley Legal Services, as well as senior citizens organizations throughout the Fifth Congressional District to encourage the development of effective programs for seniors.

I support efforts now being made at the local level to provide free legal services for the elderly who must live on a fixed income. I will continue to support, and actively work toward, the expansion through increased Federal and State funding of existing agencies who also service other segments of the population.

I do not favor the creation of additional layers of bureaucracy to deal with existing problems which can be solved by established agencies.

Senator KENNEDY. We have a full witness list here this morning. We will move right to the witnesses. If there are others in the audience who want to speak, we will put a legal pad at the "no smoking" area. You can sign up. We will make sure that their comments are made a part of the record by dividing the time available between the witnesses we have scheduled and members of the audience. We will start off with Cecilia Fennessey. Mrs. Fennessey is a resident of Franklin Field elderly housing project, 70 years old, and a longtime resident of Boston.

STATEMENT OF CECILIA FENNESSEY, DORCHESTER, MASS.

Mrs. FENNESSEY. I am Cecilia Fennessey, and I am from the Franklin Field housing project, and the increase in the rent in some of the cases were resolved. I get $212 and I am a diabetic, and I do take two kinds of insulin, and all my supplies that I need, alcohol, and so on.

The $10 increase wouldn't mean that much to me, but some increases in rent were from $28 to $48 to $68, and we are getting a small social security check, and also some from SSI.

No Services

The conditions in the project that we live in are ridiculous. We get no service, no nothing. We call week in and week out to get lights fixed and end up in the darkness. Last winter I was without heat and had to go out and buy an electric heater. It had got so bad that I wanted to have an electric heater so that I could get up and get dressed in the morning. I had no heat so I had to go to my sister-in-law, Mary Fennessey, in South Boston and stay with her. There wasn't even a month's notice when we got the increase. I got a $10 increase, which wasn't too bad. I have all my medication and medicines to buy. Some tenants there, who weren't as well off as I, were getting much bigger increases in their rents. They all had to turn to the legal advocates and whatnot to see if they could get their amounts adjusted so that they could pay the rent. But as luck has it, it fell through anyway.

Without a month's notice beforehand, that kind of an increase is kind of terrible where we have very little service, very little anything in the project that we live in, and I think the same prevails throughout Boston.

Senator Kennedy. Mrs. Fennessey, how much notice did you have that the rent was going up?

Mrs. Fennessey. One month. We pay our rent for just the next month, and we were told that, and we had already signed up leases for the year, the fiscal year, and the first of the year we get another notice of an increase in rents.

Senator Kennedy. When did you sign up? At the start of the year?

Mrs. Fennessey. At the start of the year, and then it started to climb up the month before last. It was supposed to be for the second month.

Senator Kennedy. You started off at the beginning of the year with a $40 allocation?

Mrs. Fennessey. A $40 allocation.

Senator Kennedy. Your budget for the year was at $40, and then halfway through the year you found out that it was increased, is that correct?

Mrs. Fennessey. Yes; a $10 increase a month for rent.

Senator Kennedy. How much notice did you have, 1 month?

Mrs. Fennessey. One month's notice.

Senator Kennedy. Now, when was the last time that the rents were raised, do you remember that?

Mrs. Fennessey. No; I don't. I am only in there 3 years now.

Senator Kennedy. Three years. What are the changes? You mentioned that there have been changes at Franklin Field. I understand that your heater cost you $16.

Mrs. Fennessey. Yes; I bought it at Jordan Marsh because there was no other way to heat. Some of the people can bleed their radiators for their apartment, but in the apartment that I am in you can't bleed

the radiator because the radiators are built into the wall and there are grids over them, so therefore I couldn't live there for 2 or 3 months. I had to go outside and live with my sister-in-law.

No Heat for 2 Months

Senator KENNEDY. Well, the heat was off. When was the heat off, Mrs. Fennessey?

Mrs. FENNESSEY. This past winter the heat was off.

Senator KENNEDY. For how long a period of time?

Mrs. FENNESSEY. I didn't have any heat for 2 months.

Senator KENNEDY. For 2 months?

Mrs. FENNESSEY. For 2 months.

Senator KENNEDY. Well, what happened when you——

Mrs. FENNESSEY. Well, I kept calling, calling. They came up finally to do something, but it didn't seem to make any difference.

Senator KENNEDY. It still wasn't fixed then?

Mrs. FENNESSEY. No; then there was only two rooms where there was heat, the parlor and the bedroom; the bathroom and the kitchen had no heat whatsoever. You need heat in the bathroom. You need heat in the kitchen too.

Senator KENNEDY. That is right. What are the kind of changes you would like to see out there, Mrs. Fennessey?

Mrs. FENNESSEY. Well, I would like to see something done so we can get some kind of services. We don't get any services. The dead animals outside on the lawn, and whatnot, nobody will pick up; the rats, and the cats, and everything else. There is one out there right now in the back for 6 weeks. I called the office and they said they would do something, but they never did do it. The lights in the hall. We can't, people can't climb up the inside hall to the ceiling without a ladder, and there is no light there. It doesn't do any good. You just keep complaining and complaining and nothing is done about it. I know people who live there for months, and in fact, 6 months out of the year, and they don't even take care of the leaks. They have to keep pans under the sink to catch the drips. That is right in the next house, for that matter. Right next to me.

Legal Aid to Recover Funeral Downpayment

Senator KENNEDY. Were you able to get legal assistance during the time that you have been at Franklin Field?

Mrs. FENNESSEY. Oh, yes.

Senator KENNEDY. Can you tell us a little bit about that?

Mrs. FENNESSEY. Well, it seems that I kind of got fed up on things out there and I didn't know what to do. The people were coming up and saying "have you got plans made, or this or that." Well, I purchased a grave and then I went to an undertaker up there across from Mission Church. I wanted to go in and make plans for burial, which doesn't scare me, we all have to go sometime. I paid $200 down on my funeral and at that time they told me it would come to around $1,700, although he said that by the time it happens, it would have jumped so much more. I paid $200 down on my funeral, which I never heard anything about, and the next thing I know, somebody, a cousin

of mine up on Tremont Street, called me to ask me if I knew that the place was being sold and isn't in business any more. I said, "What?" She said, "Yes." Well, in looking into it, I found out that they folded up and I never got no word, no nothing, so my $200—I don't know where it is either. He got it. And I got a receipt for it, so I went to the legal authority down at Grove Hall, and they helped me, and they are still investigating. Whether they get to any point or not, I don't know.

Senator KENNEDY. But they tried to be of some help to you?

Mrs. FENNESSEY. Oh, yes. Oh, yes.

Senator KENNEDY. How about at the time that they raised your rent, did you get any kind of legal help?

Mrs. FENNESSEY. Yes, I did.

Senator KENNEDY. Will you tell us a little bit about that?

Mrs. FENNESSEY. Well, they came down to our project——

Senator KENNEDY. Who is "they?"

THE LEGAL ADVOCATES

Mrs. FENNESSEY. The legal advocates. They are located down on Massachusetts Avenue somewhere; they have moved from Grove Hall, and they, in fact all of our neighbors, we have them come down to our hall where we give them the situation; they come down and the people give them their amounts of incomes for the month and what the amount of the increase that they could give. Some of them were very objective in the light of this because the increases were exorbitant.

Senator KENNEDY. They brought your case to the attention, I guess, of the city administration, city hall?

Mrs. FENNESSEY. Oh, yes; and a lot of neighbors, too, in the same site. In fact, I think they are still working on them.

Senator KENNEDY. Do you have a feeling that they are, or you have a voice speaking for your interest now?

Mrs. FENNESSEY. Definitely. Definitely.

Senator KENNEDY. Do you feel good about it, even though you don't know what the outcome is going to be?

Mrs. FENNESSEY. Yes, I do. And the neighbors, too. What would we do if we didn't have someplace to go for advice? It would only be impossible for us.

Senator KENNEDY. Thank you, very much. I hope you stay with us during the hearing, and I want to thank you very much.

Mr. Richard McCusker is the chief paralegal coordinator, Council of Elders Legal Service program. He will discuss the special role that paraprofessional legal aides can play in meeting the legal needs of the elderly.

STATEMENT OF RICHARD McCUSKER, CHIEF PARALEGAL COORDINATOR, COUNCIL OF ELDERS LEGAL SERVICE PROGRAM, BOSTON, MASS.

Mr. MCCUSKER. Thank you, sir. We are a group of eight paralegals, four attorneys, two secretarys, one of the attorneys being the managing attorney. We are involved in trying to assist the elderly in such

areas as social security, supplemental security income, rent control and housing, consumer and utility disputes, conservatorships, guardianships, tenant-landlord problems, housing code violations, wills, trusts, and many other legal areas.

The way we get to the elder client is by virtue of outreach. We do a tremendous amount of outreach by group meetings, on a one-on-one basis, and we have assistance from the Council of Elders, because of their ESP programs on a referral basis. If they have clients that require legal services, they are free to call on us. Our services, which are provided if they meet the eligibility requirements, are free.

How Paralegals Work

We also have an operational requirement that any case that is brought in is reviewed by an attorney. The reason for this is that however mundane it may be, we don't want anything to fall between the chairs, so each case is reviewed by an attorney. Paralegals are then given instructions as to what to do, what is the roadmap, what can we do to carry this right through to its conclusion. This saves much time. Many cases can be brought to completion by paralegals in social security, small claims, and many other areas that they have the expertise to do this. Paralegals are elders; all of them are over 60; they work 4 hours a day because of the stipulation you cannot make over $2,760 a year, or you get clobbered by social security and have to return $1 for every $2 you earn over the $2,760, and in 4 hours a day they just about get started. We bring in four paralegals in the morning and four in the afternoon so that the office is being completely covered.

They are interfaced with the attorneys on a basis that has been thoroughly tested and checked; two paralegals report to one attorney. Each case is reviewed and they follow through from there. This program has been going on since 1969. It started out as a model program. The reason was to bring legal services to elders on a no-fee basis. It was then known as LRSE; however, when we reached this point of viability, we began going full bore to really try to cover the area. Right now we have insufficient paralegals because of the grant requirements. We don't have sufficient lawyers to cover all the Greater Boston area, and we are looking for additional funding so that we can spread this point of viability into full growth.

Examples of Legal Assistance

One of the types of cases that we have untangled, in just a rough outline, is where one person in particular was robbed and attacked. We brought suit against the Commonwealth under the statute providing that she could recover her expenses under the Violent Crimes Act. Her medical bills from recognized physicians were not available inasmuch as she had Christian Science practitioners, which were not compensable. Upon the recommendation of the judge in the district court, after talking to the attorney general's office, they were found acceptable. She received an award of $142, which at that time, with the $100 deductible, would give her $42. The judge was greatly chagrined, and he erased the $100 deductible clause, and she netted the entire $142.

We had another client who was living with her son in the household. She was receiving SSI for both of them; however, she was asked to return it because they were overeligible. Now, this hardship was found out by one of our paralegals and it was determined that the social security shutoff and the requested return of the money was incorrect. It was reinstated, and further than that they were refiled and put back on SSI again.

We had another case with a person in St. Elizabeths Hospital in Brighton, 80 years old. She was found in a comatose condition on the floor in her bedroom. She was brought into the hospital by the police. She had no living relatives. She owned a home and a car. At such time as the board of the hospital decided that she no longer needed medication, she was immediately put on the list for transfer to a nursing home. We were pulled into the case because of the client not having any dependents. Further than that, we executed a power of attorney for her, so that we could begin to get in and take care of her bills, and also, with the exception of getting her located in a decent nursing home, we made arrangements for the purchase of clothing. We also went to her home and actually did a very clandestine thing, we had to break in in order to get the person her glasses, and also found $500 in her pocketbook.

The question now is that she had the home and no relatives, nobody living there. We had to do something about disposing of the home. We are looking very seriously at a conservatorship to handle the entire matter. This is an area where legal services and protective services are so closely related, it is very difficult to break them loose.

I could go on and on with more and more cases here. We have files full of them that have been resolved very beneficially to the elders and we have succeeded in bringing them to a very satisfactory culmination. Thank you.

Senator KENNEDY. You're sponsored by the Older Americans Act, am I correct on that?

Mr. MCCUSKER. Yes. Well, I work directly for the Council of Elders, under the Older Americans Act, funding under title XX as well, but legal services does not use title XX money.

Senator KENNEDY. What legal training did you receive to help you respond to these problems?

Mr. MCCUSKER. Purely by osmosis, by getting out and doing things.

Senator KENNEDY. Do you think that elderly people have a greater insight into the needs of the elderly than a young attorney that's just out of law school? If so, why do you believe that to be so?

Mr. MCCUSKER. I would say, yes, primarily because of the rapport of the elder paralegals with an elderly client. Elderly clients are very apprehensive about dealing with anybody younger than they are. They have problems, and they will talk to their friends and neighbors, but they will never bring them to the forefront because of this fear.

Senator KENNEDY. Do most of you agree with that?

[Response affirmative and negative from the audience.]

Senator KENNEDY. Go ahead.

Mr. MCCUSKER. That is about all I have to say.

Senator KENNEDY. You gave an interesting example of paralegals working with the attorneys to solve a problem.

Mr. MCCUSKER. Thank you, sir.

Senator KENNEDY. If there are some legal questions or issues which are complex and difficult, you have access to the attorneys, as I understand it.

Mr. MCCUSKER. At all times.

Senator KENNEDY. So this is really an extension of the——

Mr. MCCUSKER. Right. Actually, what we do is the legwork, in many instances, for the attorneys to save time any try to expedite these things to completion of the case.

Senator KENNEDY. Finally, what are the areas in which you find the most demands for assistance?

Mr. MCCUSKER. Well, we have a tremendous number of social security and SSI cases. We are always bombarded because of a lack of housing on a subsidized basis. We are constantly before the board on some of the housing organizations; increases in rents, the conditions of the homes that they live in. We write a good many wills. In fact, we also have an eligibility requirement of 60 years old; however, we did run into a client who was 57 years old who wanted a will. At that point in time we had to think about it, but we related to the fact that the woman was terminal with cancer. So what do we do? We write a will regardless of the age factor. But we run the whole gamut of problems with the elders, other than criminal cases. We do not handle criminal cases.

WHY DO ELDERLY HAVE LITTLE LEGAL COUNSEL?

Senator KENNEDY. What do you think the principal reason is that elderly people do not have much legal guidance or advice?

Mr. MCCUSKER. The problem is that the elderly don't know about it. Roughly 25 percent of the elder population have a complete lack of guidance. In an effort to reach them you have to do it on an outreach basis, and there is insufficient time and funding to do it; however, we are doing it by virtue of going to elderly clubs, nutrition programs, just about anyplace that anybody wants to hear of the Elders programs and legal services for the Elders.

Senator KENNEDY. How many paralegals are there in your particular group?

Mr. MCCUSKER. A total of eight.

Senator KENNEDY. How did you hear about the paralegal program itself?

Mr. MCCUSKER. Well, I was reading about it in the paper one day and decided to look into it, and I thought it would be interesting. Having been in industry all my life, I felt that anything that should be done, should be done.

Senator KENNEDY. OK. Thank you very, very much, Mr. McCusker. We will now hear from a panel of senior citizens, all of them familiar faces. They are all concerned with improving the quality of life for the elderly of Massachusetts. Mrs. Melnea Cass, president of the Council of Elders. She is certainly no stranger to myself or to this committee. Her testimony 5 years ago before this committee was helpful not only on focusing the attention on the need for direct legal services, but on the need for providing special aid in monitoring nursing homes. We have now opened free legal services for the elderly, although not enough, and a federally funded nursing home ombudsman program. Frank Manning is another friend. He is an adviser on

matters affecting the State's senior citizens, president of the Legislative Council for Older Americans, and an outspoken advocate for the State's elderly. Whatever the issue, whether legal services, nutrition, employment opportunities, or housing, Frank Manning has been a constant source of information and wise counsel. James Peace is another leader of a statewide organization dedicated to the betterment of living conditions for the State's elderly. As State director of the National Retired Teachers Association, and as the executive director of the Cape Cod and the Islands Area Agency for the Cape under the Older Americans Act, his efforts have been a vital source of information for both State and national policymaking in the field of aging. We have three good witnesses here. Melnea, would you like to start off this morning? I don't know if those lights are too bright for you.

Mrs. CASS. No; thank you very much, Senator.

Senator KENNEDY. Good to see you.

Mrs. CASS. Welcome home.

Senator KENNEDY. I enjoyed that very complimentary and fine article of yours the other Sunday in one of our Boston publications.

Mrs. CASS. Thank you.

Senator KENNEDY. It's a great, great tribute to you and well deserved. All of us feel that way. Please proceed.

STATEMENT OF MELNEA CASS, PRESIDENT, COUNCIL OF ELDERS, BOSTON, MASS.

Mrs. CASS. Thank you very much. I might start off by saying that the Council of Elders, of which I am president, the board of directors, sponsor in Boston this program for senior citizens, and it has three branch offices; one in Roxbury, one in what we call Grove Hall, the fringe of Dorchester, and one in Brighton. It serves many, many elderly, all kinds of people, all ethnic groups. It doesn't matter who they are. They serve everybody.

It has met the need of many. I notice when Mr. McCusker spoke, he told of some of the many instances that come up. Well, that could be multiplied many, many times, but the main thing is that it meets a need, and it really hasn't got enough money, Senator, to meet the needs. It needs a whole lot more money poured in, because the elderly people are now at the point where they have very little income, and when it comes to getting a lawyer, that is the last thing they do with their money. Most of them, the real poor ones, and mostly the poor white and the poor black, never had lawyers anyway. They never thought they needed a lawyer. When they went to court, the court gave them a lawyer when they got in trouble, and they used whatever lawyer that came. It was not part of their everyday living to have a lawyer or doctor, or anybody else.

So, they are reluctant when they grow older, many of them, who haven't had the advantages of knowing what it is to hire a lawyer. They just don't do it, and they have so many inequitable things happening to them.

Many of them that I talk with among my people, especially about making a will, or telling their family how much money they have, that is a great secret. They won't let anybody know what they have—

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you're not supposed to know—and when they die nobody knows what they have. When you look around you will find money under mattresses, and behind pictures, under the rugs, and all kinds of places. So the lawyer who steps into these kind of cases have been great.

Outreach Workers Needed

The outreach to get to these people is really a big, big problem. The person who opens the door for the young lawyer is important. He's needed in these cases, but the elderly are sometimes suspicious of them, and many of them fear them, and they think they are young and are putting something over on them and meddling in their business. But when you have a senior paralegal who comes along and talks to them, or when an outreach social worker who is in our program gets on the good side of them, they will tell them everything as a result, and that is the only way that you are going to reach them. Really, more money is needed in the program so there can be more outreach workers to find the people who are hidden away who don't know their rights. That is the way it is.

So as far as the program goes, I would say it's one of the greatest programs there is. I have a friend right now who has made her will with the undertaker. She went over there and she got the casket, told the undertaker how much the policy is for, the amount of insurance so they know how much to charge her, you know. And then she has to pay every single month on it, because, years ago you could get buried for $500. Now, it is going to cost about $2,000. She has to pay out of her income every month to the undertaker on her bill for burial. Nobody knows what she is paying to the undertaker. So, that is where you need good lawyers, to go along to help her, and to guide her. She is only one person; there are many, many, who do this very same thing.

There are many other things that we do—old people—because we don't want to tell anybody. If we have a good friend and we like them, we will sometimes sit down and tell them.

More Volunteer Lawyers Needed

I think that more money, as I said before, is needed in the program to expand upon these services, to give the program more people who are really trained to do this job. There should be more volunteer lawyers. I think that some of the lawyers who retire from some of the big law firms should give some of their time as a volunteer to come around and help the poor people, because a lot of them made money on them and they could give some of the money back. [Applause.]

There is a field for much more development in this. It is brand new, and the National Council of Senior Citizens, in Washington, D.C., of which I am a board member, are really the people who are behind this, pushing this, and seeing that it works all over the country. You should be proud that we have all these organizations to speak for us. We go down to Washington to visit with Senator Kennedy and all the rest of our representatives to see that they do the right thing down there. [Applause.]

We appear down there in Washington just like we are appearing here today at this hearing in Massachusetts. All do not speak for us

but we have somebody in Washington lobbying for us all the time who really takes care of us. We should thank them all. We are thankful in our old age, and back them up. Those of us who don't know anything about the law have them to speak for us because we really need it.

I also want to pay a tribute to the workers who work with us, the young people who work with us. They are well equipped. As I always say, you all went to school, and you got the education, so you ought to know what to do. So, we put ourselves, many times, in their hands, and they do a good job. So, I want to pay a tribute to all of them because without them we couldn't make it.

We have a lot of big ideas, you know, when we get old, but our steps are slow, and our heads get a little slow, too, so maybe they can think while we are trying to get it together. We tell you what to do. You can get it together from what we say, so we thank you for your help.

Senator, we thank you, too, down in Washington, for what you do for us. We watch you, you know. We know what you are doing. He is always in our corner. [Applause.]

Senator KENNEDY. Thank you.

Mrs. CASS. We don't have to worry about him. He is there when we need him, and when there is a vote coming up for the elderly, you can pick up your paper and read that he was there and what he was there to do. That is what we want. So, we want to keep him there—please don't forget that. [Applause.]

Senator KENNEDY. I didn't see those remarks in your prepared testimony. They are nice to have—a little cool northerly breeze on a hot morning in August. Thank you, very much.

Frank, why don't we hear from you now.

STATEMENT OF FRANK J. MANNING, PRESIDENT, LEGISLATIVE COUNCIL FOR OLDER AMERICANS, BOSTON, MASS.

Mr. MANNING. First, I usually agree with Melnea Cass. One thing that she said that I have to take exception to is that age slows up our mental faculties. I have felt a slight acceleration in that area since I retired. In fact, I laughingly call it my retirement—I have never been so damn busy in all my life. But what we are discussing here this morning is one of the issues connected with retirement, an ever-growing problem in this country. Elders are not problem people: society is giving us a hell of a lot of problems, not the least of which is the lack of adequate income maintenance plans in this country. When an ordinary elderly person, on fixed income, thinks about a lawyer, he immediately thinks of a big fee and he also has a certain amount of mistrust, which, of course, is not always justified. The fact that most of those connected with Watergate were lawyers doesn't mean that they are all that way. A couple of them that I know are all right.

"THE LAW . . . IS AN AWESOME THING"

As a matter of fact, the law, to many elderly people, is a very awesome thing, a distant thing, and let me cite you a case in particular. One afternoon, about 3 o'clock, I received a telephone call from a

woman who identified herself as being about 75 years of age and she had a real problem on her hands. She said, "Mr. Manning they are selling my house, because I couldn't pay my taxes."

So I said, "Well, when are they selling your house?"

She said, "Tomorrow morning at 8 o'clock."

I said, "Dear, I wish you had gotten in contact with me sooner, but we will do what we can." So, I immediately got hold of one of our VISTA volunteers and, by the way, you can thank Senator Kennedy for having those VISTA programs, because when they threatened our programs, he used extraordinary means to save them. I don't know all the details. [Applause.]

We have a retired lawyer among other professionals, and I talked it over with him, and I said, "Do you have a friend?" I am not going to give the locale or the name of this. It's a little shady, you know. I said, "Do you have a friend in the right place?" And we worked out a deal that he would be there at 8 o'clock in the morning when the sale started. And he would have the opportunity to bid on the house. So, he arrived on time with a certified check for $1,000. Those two people are still sleeping in their own home, thank God, and they don't have to worry about the back taxes because, technically, they are new owners.

Now, where could you get service like that for nothing? [Applause.]

I am sending a memorandum on it to F. Lee Bailey to wise him up. As a matter of fact, the cost of legal service today—and I don't really want to downgrade all lawyers, surely they have overhead and heavy expense—and any program of legal services that needs lawyers should pay them an adequate fee so that they can serve us properly; but, however, at present we have about 22 million senior citizens over 65; and in 1980, there will be 24 million; and in 1990, there will be 27 million. In 2000, it will be 30 million; and in 2010, it will be 40 million; and yet I have not heard outside of the Senate Committee on Aging, and Senator Kennedy is a member, I have not heard, by any of our leading public officials, an in-depth discussion of how the Nation is going to meet that problem.

Full Access to the Law a Major Need

One of the great needs in any society is full access to the law regardless of your income, station, regardless of who you are; it is part of our creed that every man, woman, and child is entitled to full access to the law, and a poor person cannot get that, and I think that in this respect the legal services program is performing a service.

Now, as a representative of a statewide organization, I get calls from other areas, small communities, that do not have legal services, and one of the things that we would like to do is to get retired lawyers, volunteers, young people, to work with them in these communities, so that not only Boston and the urban communities will have these services, but also the smaller communities.

Now, the economics of the situation is such, where do we spend our money? Aside from an occasional Drambuie or martini, where do we spend it? Mostly on clothing, food, shelter, and medical costs. That is where most of our money goes. There is very little left for things like legal services or anything else that is outside the ordinary necessities of life, and the principal reason for this my friends is that in determining

our social security and other pension systems there is no margin for living. We are caught in a tight economic vise.

Just consider this one fact alone: A study in the early 1970's of the income of families in this country shows a glaring discrepancy which should bring the crimson of shame to the cheek of any conscientious American. The median income of couples under 65 is $12,500. The median income for couples over 65 is $4,800. We got a long way to go folks to tighten up that gap there, and it means that legal services, among other things, are consistently denied to you.

I know a lot of people that come into my office, as you have suggested, Mrs. Cass, to have wills made out, or even in some cases, and I don't like to say this, where members of the family are trying to do them out of their homes. We have a few cases like that, too. It is horrifying to think about, but it is true, and then you have tenant-landlord relationships and you have administrative decisions.

A good advocate for the elderly does not confine himself to any one area. There is a wide range in the administrative area, or wide range in the legislative area, and a wide range in the judicial area. So, you have to be a good advocate and you have to know where to go to get the help that this particular person needs, and so as far as the courts are concerned, all too often they are so busy that they don't have much time for poor defendants who have no friends or don't have much money.

Of course, if you operate on a large scale, there is always a good chance that you get a pardon, but if you do any minor offenses, you are in real trouble. So very often there is not adequate representation, and while the problem of the elders is not so much the criminal field, there are major problems in their everyday lives.

Paralegal Advocacy Is Needed

I want to close with this because I think my time is up, but I want to fill in with this little illustration where legal, paralegal advocacy, is needed.

A woman came into our office and said for some reason the Social Security Administration had denied her money for her children who were classified as survivors. She was a widow. There was some technical difficulty there. I can't go into it now. As you know, Senator Kennedy was instrumental recently in getting an ombudsman office for social security.

Now, the purpose of this ombudsman office is to handle cases that are so tangled that they require in-depth study. This is where that special social security office headed by Mr. McNamara comes into the picture.

So, this particular woman, not only did she win her case, but she got $2,250 for one of the children which she should have been receiving for the last couple of years, and in the case of another child, $125 a month. I don't have to tell you the difference this made in the quality of her life. Had she not had an advocate, she might have gone on in cramped existence for the rest of her life and never received the full measure of justice.

Sometimes I wish that I could be like the judge who said "This court is often in error, but never in doubt." But unfortunately, I have

doubts, and I have frustrations, but I want to tell you this, that we have to support these elderly programs, and at the earliest opportunity we have to get together with the Senate Committee on Aging saying, in addition to these programs, what about the 80 percent of senior citizens whose only need is a decent home, a decent income, and good health programs. Let's get down to brass tacks, and in the meantime, get legal services going. Thank you.

Senator KENNEDY. Jim Peace.

STATEMENT OF DR. JAMES S. PEACE, STATE DIRECTOR, NATIONAL RETIRED TEACHERS ASSOCIATION-AMERICAN ASSOCIATION OF RETIRED PERSONS, HYANNIS, MASS.

Dr. PEACE. Mr. Chairman, you have assigned to me one of the most difficult jobs that I ever had. To follow Mrs. Cass and Frank Manning is most difficult.

Senator KENNEDY. I agree.

Dr. PEACE. I don't see how it is humanly possible to add very much, but just let me try to be rather brief because I have cut down my testimony, after acting on instructions from not only your staff people, but because as we get older our tongue does not lose its elasticity. Maybe our muscles do, but we keep on talking. I will use a guide here so that I will stay within the bounds.

My name is Jim Peace, and I am the Massachusetts State director for the National Retired Teachers Association. I am also executive director of the Elder Services of Cape Cod and the Islands, Inc. Nationally, I believe the National Retired Teachers Association and the American Association of Retired Persons have approximately 9.8 million members, and in Massachusetts, we have 366,300. That is quite a significant number.

I am meeting here today with you in order to orient the committee to my testimony which has been prepared and has been distributed—the concerns that we see on a day-to-day basis in dealing with older people. Before going into what is needed in legal services—and I think that, in general, you know the ramifications of it—I would like to take a moment to describe, what, in fact are the legal problems of the elderly and their difficulties in obtaining legal services to assist them. I will also touch briefly on efforts by the Congress and our associations.

It must be remembered that the elderly, as a class, may be more vulnerable and more susceptible to abuses in these areas and may be physically unable to take meaningful action on behalf of themselves to rectify such wrongs.

UNIQUE LEGAL PROBLEMS OF ELDERLY

The elderly also experience legal problems that are unique to them; for example, age discrimination in employment, protection with respect to nursing home care, involuntary commitment, enforcement of pension rights, and eligibility for special tax relief programs. The most prevalent and serious problem, however, is one that may not even be perceived as a legal one; namely, the inability of many older persons to obtain sufficient resources on which to live decently. The elderly have legal rights to food, medical care, and money payments; things

under a complex network of local, State, and Federal programs, including social security, SSI, medicare, medicaid, and food stamps.

The elderly may forfeit their legal rights because they do not recognize that they have legal problems. They may be too proud to seek what they consider "free" help or are anxious somewhat about the uncertainties of obtaining an attorney. More importantly, the elderly, at times, forfeit their rights because they are unable to obtain legal assistance.

A retired person with a legal problem arising from a public benefit program may not be able to obtain counsel from the local bar association which regards public benefit law as too complex and unremunerative to be of interest. The alternative, free legal assistance through a legal service office, is also, for all intents and practical purposes, unavailable. Legal service offices, with their limited professional staff, have apparently been unable to develop sufficient expertise to handle problems in the public benefits area expeditiously, and, therefore, have been willing to draw out a large segment of their client population—the elderly—whom they know that they will not be able to serve effectively.

Elderly Represent 6 Percent of Legal Clients

Recent statistics indicate that the elderly represent 17 percent of those eligible for free legal services, but were only 6 percent of those actually served.

The situation of the nondestitute elderly and the availability of legal assistance to them is something that deserves very serious attention. Because legal service programs funded locally or by the Legal Services Corporation have rigid income guidelines, a retired person may not qualify for assistance. Unfortunately, this same person may not be able to afford a private attorney who may charge from $25 to $60 an hour.

The associations have obtained proof of this unfortunate fact in the letters they receive from their members. Although the associations do not purport to, nor do they, offer legal service to their members, the legislation department and caseworker staffs of NRTA/AARP national headquarters report that they receive an average of 485 letters a month from members seeking legal services because they cannot obtain it elsewhere. I want to add something. We can document this information, Senator.

We believe that these facts lead to the following conclusions: The elderly seriously need services to assist them with their special legal problems. It is important to develop legal service delivery systems if you are going to help them. The Congress, our associations, and others, have recognized this need and attempted to meet it. We believe, however, that these actions will encourage development of further legal services we are planning in certain areas.

In 1975, the Administration on Aging, and their representatives, here this morning, because of increased appropriations under the Labor-HEW Appropriations Act, was able to fund 11 model projects designed to foster improvement of legal services for the elderly. The 11 projects offered a variety of approaches toward this improvement.

Lawyer-Social Work Team

Now, I do want to say a word or two about the work that has been done by the associations. We believe that the retired persons constitute an important human resource that should be utilized in the delivery of legal services. Two universities were awarded research grants through the NRTA and AARP Andrus Foundation—St. Louis University and Duke University. I applaud Mrs. Cass' suggestion a moment ago. Under the grant awarded to St. Louis University of Applied Gerontology, the project will be to test whether a lawyer-social worker team, operating in tandem, can provide services to meet more fully the legal social problems of the elderly in a more comprehensive manner.

The American Bar Association, at its convention this month, considered a plan to create legal aid panels to serve the elderly, to be manned by retired attorneys.

Future action: We suggest appropriate legislation would require any federally funded legal services program to create a special component that is designed to assist the elderly. Our associations "legal counsel" project has successfully demonstrated that retired persons can be trained and be utilized as paraprofessionals.

We also stated that the retired person who has a legal problem under a public benefit program may not be eligible for assistance and yet cannot secure a private attorney. We strongly suggest that consideration be given to establishing alternative conditions, other than income, in order to determine eligibility for assistance under federally funded programs.

Denial of Rights

The most prevalent and serious legal problem affecting the elderly is the denial of their rights under local and Federal programs. The associations legal counsel project has demonstrated that entitlement to public benefits is of primary concern to retired persons, regardless of income.

I say these things, Senator Kennedy, because I feel now that the Older Americans Act now requires all States to spend a percentage of their title III moneys in one or more of the four items listed under law. A State, if it determines, may not allocate any title III moneys for legal services. Fortunately Massachusetts does. In the light of the present need for such services, perhaps the law should be amended to insure that a percentage of title III funds will be spent on legal services.

We have pointed out that the elderly may not know that they have encountered a legal problem, and even if they do, they may not know assistance is available. Continuous effort is required to keep the legal counsel project before the elderly who need the services. Hence, it is essential that the public must be made aware of legal services as services are more fully developed and they must be more fully utilized. We believe specific legislation may be needed to insure that sufficient funds are available to inform and educate the public about legal services.

In conclusion, we believe that important steps have been taken to alleviate the problem of inadequate legal services to the elderly. More action is called for. I hope that our remarks and suggestions will be

helpful to you in considering and determining what future action is necessary. Thank you.

Senator KENNEDY. Thank you, very much. Frank Manning had to excuse himself. He was to be on a television program on channel 7, a new program devoted to the elderly, and it was getting close to air time. He had to excuse himself, which he did with considerable regret. We can be satisfied that he is out giving the gospel in other places as well. We appreciate the fact that he was able to be here and give, along with the rest of our panelists, absolutely superb testimony.

I don't see how anyone could argue or differ, or fail to agree, with just about every aspect of these comments. These three panelists have probably devoted as much time and energy and talent, and probably more importantly, their real heart and soul to the needs of our elderly people as anyone.

RESPONSE OF THE PRIVATE BAR

Before we ask Mrs. Cass a few questions, I would like to ask Jim Peace just one, and that is, what has been the response of the bar in your area to providing different kinds of services? Melnea Cass made a very good point earlier about involving the local, State, and national bar associations in these problems. I think this is an excellent suggestion. It is very interesting to me, as someone who is a strong supporter of the legal services program, that by far the most innovative legal program was developed within the OEO program and not within the bar association.

Once the legal service programs were initiated, we were able to begin to extend it to the elderly. It still doesn't do nearly enough.

I am going to write to the American Bar Association.* We will invite them to submit testimony on what they see their responsibilities as being and what action they are going to take within their associations to meet the challenge of providing legal assistance to the elderly. But now I would like to hear from Jim Peace. What is going on in your area?

Dr. PEACE. We get very little on the Cape, Senator, and I would like to make reference to what I feel to be a very significant report of the recent American Bar Association convention. In the legal profession, change is slow, which you probably will endorse.

Ralph Nader, the consumer advocate, said at the bar association convention that prospects for increased sensitivity by the bar to these needs were zero—just zero. Chesterfield Smith, a former association president, who favors many of our proposals, said that in a few years he hoped more lawyers would be disbarred if they did not make their individual contributions to public interest law. He knows that "in a few" means 14 years to 16 years. Of course, I do want to point out, too, that when a law is changed, many of the legislators, I believe, Senator, are also attorneys. So whether or not that will move as quickly as 14 to 16 years, I am not so certain.

But it has been very slow on the Cape. We have used the public defender on the Cape who has agreed to come in on occasion to assist us. We do have a very serious problem of a good number of ripoffs,

*Senator Kennedy wrote the American Bar Association on Sept. 8, 1976, requesting a representative from the association to testify at the September 29, 1976, hearing on "Improving Legal Representation for Older Americans" in Washington, D.C. See part 4 for the testimony of the American Bar Association.

and these people are being ripped off and they do not know where to turn.

I would like to add, Senator Kennedy, if I may, that Ray Eldridge, the president of the Massachusetts Retired Teachers Association, endorses the concept of the recommendations that I have made, and I support the statement of Mrs. Cass. I think that the senior aides out there in the audience demonstrate very effectively what can be done when senior power goes to work to help seniors. Why don't you stand up—all you senior aides—so we can see who you are? [Applause.]

Senator KENNEDY. We welcome them here. There are 63 senior aides, representing 55 communities, which are served by the senior aid program. All of these aides are working in social service fields. All of them are assisting other senior citizens in their given communities. The aides assembled today represent a force of 158 throughout the Commonwealth, providing services to all senior citizens, and they are sponsored by the community service employment program. Might I just mention at this point that I am delighted to have been the sponsor of that particular program. We have seen in our own State of Massachusetts what the talents and skills of our senior citizens can do. We have great needs in the cities, towns, and rural areas of this State for the kind of attention these senior aides can provide. I want to indicate my continuing commitment to that program.

Melnea, is there any final word of wisdom you want to give us?

Mrs. CASS. No; I just want to tell you, keep up your good work. And don't get tired, because you can get tired too quickly.

Senator KENNEDY. Don't you get tired. You're the one that I am worried about. [Applause.]

Mrs. CASS. I tell you I am never going to give up, but I want to say that they open the door too, Senator, and much of this legal thing, because they talk to the people one to one. It means a lot to people. God bless all of them. And are you through with us?

Senator KENNEDY. I am never through with you. But we are glad to have you.

If we could have the other Members of the Congress and the Senate listen to this panel, we wouldn't have problems funding these programs. We will try and give them the message down there.

The prepared statement of Dr. Peace will be inserted into the record at this time.

[The statement of Dr. Peace follows:]

PREPARED STATEMENT OF DR. JAMES S. PEACE

Mr. Chairman: My name is Dr. James S. Peace. I am here today to testify on behalf of the National Retired Teachers Association and the American Association of Retired Persons. These associations represent approximately 9.8 million retired persons nationally and 366,300 persons in Massachusetts. I appreciate this opportunity to testify before you on an issue that is very important to our people—the delivery of legal services to the elderly.

I am presently NRTA State director for Massachusetts. As state director, I am meeting with our members throughout the State and learning firsthand their problems and concerns. I am also executive director of Elder Services of Cape Cod and the Islands, Inc., which provides supportive services to enable the elderly to remain in their homes as long as it is medically possible. These include homemaker services, chore services, and congregate meal programs in which elderly volunteers are utilized.

Before discussing what action may be needed to improve and expand legal service delivery systems for the elderly, I would like to take a few minutes to describe what, in fact, are the legal problems of the elderly and their difficulties in obtaining legal services to assist them. I will also touch upon efforts by the Congress, our associations, and others to alleviate these problems.

The elderly experience legal problems that are encountered by all citizens, for example consumer and landlord-tenant difficulties. Even though the problems may be substantially identical among all age groups, it must be remembered that the elderly, as a class, may be more vulnerable and susceptible to abuses in these areas and may be physically unable to take meaningful action on their behalf to rectify such wrongs.

The elderly also experience legal problems that are unique to them; for example, age discrimination in employment; protection with respect to nursing home care and involuntary commitment; enforcement of pension rights; and eligibility for special tax relief programs. The most prevalent and serious problem, however, is one which may not even be perceived as a legal one, namely, the inability of many older persons to obtain sufficient resources on which to live decently. The elderly have legal rights to food, medical care, and money payments under a complex network of local and Federal programs including social security, SSI, medicare, medicaid, and food stamps. A list[1] has been attached to this statement outlining the legal problems of the elderly which require legal assistance.

The elderly may forfeit their legal rights because they do not recognize they have legal problems. They may be too proud to seek what they consider to be "free" help or are somewhat anxious about the uncertainties of obtaining an attorney. More importantly, the elderly, at times, forfeit their rights because they are unable to obtain legal assistance. There are a number of reasons for the unavailability of legal assistance.

A retired person having a legal problem with a public benefit program may not be able to obtain counsel from the local bar association which regards public benefit law as being too complex and lacking in monetary awards. The alternative, free legal assistance through a legal services office, is also, for all practical purposes, unavailable. Legal services offices, with their limited professional staff, have apparently been unable to develop sufficient expertise to handle problems in the public benefits area expeditiously, and therefore have been unwilling to draw out a large segment of their client population—the elderly—whom they know they will not be able to serve effectively. Recent statistics indicate that the elderly represent 17 percent of those eligible for free legal services but were only 6 percent of those actually served.

The situation of the nondestitute elderly and the availability of legal assistance to them deserves serious attention. Because legal service programs, funded locally or by the Legal Services Corporation (formerly by the Office of Economic Opportunity), have rigid income guidelines, a retired person may not qualify for assistance. Unfortunately, this same person may not be able to afford a private attorney who may charge from $25 to $60 an hour. Furthermore, even if resources are available to pay a private attorney, such attorneys may be unavailable since, as mentioned above, the private bar association concentrates minimal assistance to public benefit programs.

The associations have obtained proof of this unfortunate fact in the letters they receive from their members. Although the associations do not offer legal services to their members, the legislation department and caseworker staffs of the NRTA/AARP national headquarters report that they receive an average of 285 letters a month from members seeking legal services from the associations because they cannot obtain it elsewhere. Our associations' "legal counsel for the elderly" project, which I will discuss later, reports that in 1 month (June 1976) it received approximately 200 letters from individuals across the country requesting assistance with their public benefit problems.

We believe that these facts lead to the following conclusion. The elderly seriously need legal services to assist them with their special problems. It is important to develop legal service delivery systems specifically designed to help the elderly. The Congress, our associations and others have recognized this need and have attempted to meet it.

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[1] See p. 164.

The Congress has promoted the expansion of legal services to the elderly. Under the Older Americans Act Amendments of 1975, a new emphasis was placed in the law upon legal services to the elderly. Certain provisions under the 1975 amendments, which related, in whole or in part, to legal assistance, have produced the following significant results. The social services, which the elderly should be receiving under a comprehensive and coordinated service system, developed by the State and local agencies on aging, now include legal and other counseling services. All States are now required to spend a certain percentage of their title III funds on one or a combination of the following items: transportation; home services, including homemaker services and home health services; legal and other counseling services and assistance programs, including tax counseling and assistance; and residential repair and renovation programs. Finally, the commissioner is now authorized to make grants for the training of lawyers and paraprofessionals in the rendering of legal assistance in a broad variety of cases. We believe these actions will encourage the development of legal services in the planning and service areas.

In 1975, the Administration on Aging, because of increased appropriations under the Labor-HEW Appropriations Act, was able to fund 11 model projects designed to foster improvement of legal services for the elderly. The 11 projects offered a variety of approaches towards this improvement. Particular emphasis was placed upon initiating a process that would result in the inclusion of a legal services component as part of the coordinated services provided in each planning and service area. Our associations were among the 11 grantees and developed a model project in the District of Columbia, entitled "legal counsel for the elderly," to which I referred earlier. This project successfully demonstrated the effective use of elderly paraprofessionals. Working under the supervision of an attorney and with special training in public benefit programs, these elderly volunteers were able to do all client interviews, handle informal and formal contacts with agencies, and, in many cases, draft correspondence and do basic research. I understand that a witness from "legal counsel" will be testifying before you in Washington at a later date, so I will not discuss the activities of this office in any greater detail.

Recently, the Congress increased HEW appropriations to a sufficient level so that the Administration on Aging was able to proceed with its second phase to improve legal services. Essentially, the plans call for the establishment of the State agency on aging as the focal point for the promotion and development of legal service activities in that State. AoA intends to award model project funds to the State agencies on aging on a formula basis. To assist the State agencies, AoA has awarded grants to five model projects for the purpose of providing technical assistance. Based upon the success of the "legal counsel for the elderly" project, the associations are among the five grantees. We expect to assist States in establishing legal service activities that involve volunteer workers and developing organizational links between State and area agencies, legal service organizations, and voluntary organizations. To what extent that AoA's second phase of activities will expand and improve legal services is yet to be determined.

Our associations have long sought to improve and expand the delivery of legal services to the elderly. In addition to our projects funded by AoA, we have developed our own legal counseling programs and promoted other educational groups in their studies of this problem.

Most notable among the associations' efforts to assist retired persons with their legal problems is our free tax-counseling program known as Tax-Aide. Under the Tax-Aide program, NRTA/AARP members, a majority without prior experience in the tax field, have been specially trained to provide tax counseling. In 1974, 2,329 volunteer tax counselors provided free tax-counseling to 213,696 elderly taxpayers.

The NRTA/AARP Andrus Foundation awarded research grants to Duke University and St. Louis University. Under the grant awarded to the Duke University Center for the Study of Aging and Human Development, law students are given the opportunity to represent the elderly clients through outreach work in the senior citizen centers and legal aid society. Under the grant awarded to the St. Louis University Institute of Applied Gerontology, the project will test whether a lawyer-social worker team can provide the services to meet the legal and social problems of the elderly in a more comprehensive manner. We believe that these projects will provide valuable insight into the most effective and efficient method to deliver legal services to the elderly.

State and local agencies, legal aid or services programs, and others have acted on their own initiative, and developed legal services for the elderly well in advance of AoA's recent actions. While we do not have a compilation of legal programs for the elderly throughout the country, it is estimated that approximately 100 such programs are in operation. These programs present a broad spectrum in terms of the elderly clientele served (e.g., income limits, residency requirements), the type of assistance provided (e.g., full range of services, only nonfee generating cases) and the funding obtained to insure continued service (e.g., title XX funds, OAA funds). According to the Massachusetts Department of Elder Affairs legal services for the elderly in this State are presently provided through the activities of the nursing home ombudsman program. The department also plans to publish and distribute to the area agencies on aging a booklet on the legal problems of the elderly.

I had briefly mentioned that the role of the private bar association in assisting the elderly with their special legal problems has been limited due to the unique nature of these problems. This does not mean that the private bar association has not recognized its obligation to improve services to the elderly. Assistance can be improved, particularly where the legal problem is encountered by all citizens, and the private attorney would have considerable experience in dealing with it. The American Bar Association, at its 1975 annual meeting passed a resolution which supported a program to establish, with the cooperation of local and State bar associations, panels of retired attorneys. These panels would provide legal assistance on a pro bono basis to the elderly who are financially unable to obtain an attorney. Moreover, the family law section of the ABA is currently considering a proposal that in 1977 the association will sponsor a national institute on the legal problems of the elderly. We believe these to be very constructive programs and encourage the ABA to pursue them further.

While these facts indicate there are activities underway on various levels to improve and expand the delivery of legal services to the elderly, they also show that a vast need for such services remains. Further actions to meet this need must be forthcoming. The Congress has an important responsibility to promote and develop a comprehensive national effort. To assist you, our associations ask that you consider and study the following recommendations.

We have previously pointed out that existing legal services programs funded by the Legal Services Corporation are not fully utilized by the elderly for a number of reasons. We suggest appropriate legislation that would require any federally funded legal services program to create a special component that is designed to assist the elderly. Our associations' "legal counsel" project has successfully demonstrated that retired persons can be trained and be utilized as paraprofessionals in providing legal services to the elderly. The staff attorneys on the project have estimated that they were able to increase their caseload by 30 percent to 50 percent by working with volunteers. The creation of a special component, such as the "legal counsel" project will help to increase the utilization of existing legal services by the elderly.

We have also stated that a retired person who has a legal problem under a public benefit program may not be eligible for assistance under a legal services program and yet cannot secure a private attorney because the case may not offer sufficient monetary awards. We suggest that consideration be given to establishing conditions, in addition to income, to determine eligibility for assistance under a federally funded program. Other possible conditions are the percentage of income derived from public benefit programs or age.

In our discussion of the substantive legal problems of the elderly, we stated that the most prevalent and serious legal problem affecting this group is the denial of their rights under local and federal programs. Our associations' "legal counsel" project has demonstrated that entitlement to public benefits is a primary concern of retired persons, regardless of income. A retired person who is attempting to determine his eligibility for certain benefits cannot obtain unbiased legal counsel from the government agency that is administering the federal program. The establishment of a special office within the Government agency, which provides unbiased legal assistance to the elderly on benefit entitlement, may help to alleviate this problem.

The Administration on Aging has attempted to place the State agencies in a leadership role for the development of legal services. As we pointed out, the Older Americans Act now requires all States to spend a percentage of their title III funds on only one of the four items specified under the law. This

means that the State, if it so determines, may allocate no title III funds for legal services. In light of the pressing need for such services, perhaps the law should be amended to insure that a percentage of title III funds will be spent on legal services.

We have pointed out that the elderly may not know that they have encountered a legal problem and, even if they do, they may not know assistance is available. Furthermore, our associations' "legal counsel" project reports that it has become abundantly clear that a continuous effort is required to keep the name of the project before the elderly who need the services. The "legal counsel" project also reports that it has received letters from across the country requesting legal assistance. For these reasons we find that the public, particularly the elderly, must be made more aware of legal services. We believe specific legislation may be needed to insure that sufficient funds are available to inform and educate the public about legal services for the elderly.

In conclusion, we believe that important steps have been taken to alleviate the problem of inadequate legal services to the elderly. However, more action is required. I hope that our remarks and suggestions will be helpful to you in considering what future action is needed. Thank you.

LEGAL PROBLEMS OF THE ELDERLY

1. *Social Security Old Age Benefits.*—Many individuals are unaware of their eligibility to receive benefits or of their entitlement to higher benefit payments. An individual, even if he does feel that he is eligible or is entitled to higher benefits may not know how to determine such or to contact the appropriate officials. A legal services program should advise the elderly of their eligibility and assist in benefit computation.

Many individuals are unaware of their right to appeal adverse determinations by the Social Security Administration, or are unfamiliar with the appeal process. A legal service program should be able to assist and to represent those who may wish to make a formal appeal.

2. *Supplemental Security Income.*—The problems that have arisen under SSI have been described as severe.[1] Only 2.3 million people of the estimated 4 million elderly who are eligible for SSI are receiving benefits. As of January 1975, there were approximately 27,000 appeal hearings pending concerning SSI, a majority of which were eligibility claims filed by elderly persons.[2] Being a relatively new program, many people are uncertain as to the basic provisions of SSI.

Therefore, a need does exist to alert the elderly of their right to benefits under SSI and to explain the program. Assistance can also be provided to those elderly whose checks have been lost or delayed.

3. *Medicare.*—A major issue is the wrongful denial of reimbursement for medical expenses and the interpretation of those provisions which limit or extend benefits (e.g., items and services which are reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of malformed body member). Issues also arise as to the delayed determination of benefits and the scope of services covered.

4. *Medicaid.*—Medicaid is a joint Federal-State program in which the states are given considerable latitude in determining eligibility requirements and the scope of services provided. Consequently, issues have arisen regarding eligibility, the denial of benefits based upon residency requirements, in addition to those issues arising under medicare.

5. *Food Stamps.*—Elderly persons, although eligible under the food stamp program, have not been provided with proper information or are reluctant to enter the food stamp office and apply. These individuals who are experiencing extreme financial difficulties are entitled to this relief. A legal services program should provide basic eligibility information for food stamps.

6. *Public Housing.*—Many older persons, faced with ever-increasing costs, cannot afford decent housing. A legal services program should assist those eligible older persons to obtain public housing. The older person, as well as all tenants, are entitled to the quiet enjoyment of their premises and should be protected from arbitrary action or harassment by the public landlord.

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[1] House Report 94–67, p. 9.
[2] *Ibid.*

7. *Landlord-Tenant.*—The older person may be uncertain of his rights to decent housing or his rights to evict a tenant who will not pay the rent and move out. The older person may also not know how to proceed in order to enforce these rights.

A legal services office should advise the older person requesting assistance as to the duties and responsibilities of the landlord to maintain the premises in a habitable condition, the law and regulation concerning rent increases and conversion of apartment units to condominiums, as well as advice on eviction procedures.

8. *Real Property Taxes.*—To alleviate the income drain caused by property taxes upon older persons with fixed incomes, the States have provided property tax concessions to this group. Such advantages can, however, be lost if the property has been assessed at an unreasonable amount. A legal services program should provide basic information on property tax relief and assessment appeal procedures.

9. *Pensions.*—Congressional studies have shown that persons rarely receive back what they contributed to a pension plan. These findings prompted the enactment of the Retirement Income Security Act of 1974. However, this act does not provide relief for those persons who retired or became disabled prior to the effective date. These individuals are not assured of their benefits and may require legal assistance.

10. *Consumer Problems.*—Older persons, as well as all consumers, can become victims of deceptive practices in the selling, pricing or advertising of goods and services, buying on credit or may wish to enforce their rights under a warranty or guarantee. The older person may become involved in a dispute with an insurance carrier or health care provider over the coverage included within a policy.

An older person may require assistance in negotiating with a merchant over the repair or replacement of a defective good or to lower a repair bill to conform with estimates. Assistance can also be offered in negotiating with insurance carriers. Older persons would also be provided with information regarding the small claims court and how to use it to obtain relief.

11. *Age Discrimination.*—Discrimination based upon age can occur within a wide range of areas, e.g., employment and discharge, consumer credit, housing. The older worker can enforce his rights under the Age Discrimination in Employment Act which applies to persons between 40 and 65 years of age. Older workers must be advised of the coverage, prohibitions, enforcement, procedure and relief as set forth within the act.

Senator KENNEDY. All right, now, we have a panel who are professional and knowledgeable and active in the delivery of legal services in the State to the elderly; J. J. Donovan, director of the nursing home ombudsman project for the Massachusetts Department of Elder Affairs, retired attorney, who in his ombudsman post is establishing a clearinghouse to help people locate nursing home openings, and who has also initiated a furlough program where nursing home residents forced to be hospitalized can be assured of a bed upon returning to the nursing home. This program is funded through the Older Americans Act. Bob Spangenberg is a member of both the Boston Bar Association and the Massachusetts Bar Association, former executive director of the Action Plan for Legal Services, who, during that period, conducted a study on the legal needs of low-income persons in the Boston area, and provided the court information on the legal needs of elderly citizens. Gerald Wall is a staff attorney for the Council of Elders Legal Service Program, who filed suit on behalf of the public housing tenants to prevent the Boston Housing Authority from imposing rent hikes. The injunction was issued to prevent those hikes from taking place and now remains pending in the courts. James Bergman is New England regional director of the legal research and services for the elderly program funded by the Administration on the Aging; under the Older Americans Act. Mr. Donovan, you may start.

STATEMENT OF J. J. DONOVAN, DIRECTOR, NURSING HOME OMBUDSMAN PROJECT, DEPARTMENT OF ELDER AFFAIRS, COMMONWEALTH OF MASSACHUSETTS, BOSTON, MASS.

Mr. DONOVAN. Good morning, Senator. My name is J. J. Donovan. I am the State nursing home ombudsman director in the department of elder affairs. The purpose of the nursing home ombudsman project is to provide a forum through which nursing home patients, or their next of kin or friends, can place complaints about nursing home care which we can process.

In a couplet, I can say that our purpose is to improve the quality of care which nursing home patients receive and to upgrade the safety of the environment in which they live. Early in our project it became apparent that it was important for us to work on the problems and also to provide information and referral for nursing home patients. We found that a problem involving the spouse remaining in the community soon became a problem for the nursing home patient and a subject of worry and concern and trauma, and therefore we expanded our operation to provide assistance in solving problems in the community.

The ombudsman developmental specialist has been recently created as an offshoot of the nursing home ombudsman project. The purpose of the ombudsman developmental specialist is to develop local resources which will provide assistance to nursing home patients by visiting them in the nursing home locale to determine what complaints and what problems exist, and how they can be resolved.

FIVE KEY LEGAL AREAS FOR NURSING HOME PATIENTS

In the past year we have added a legal service project to the ombudsman activity. This project is dedicated to providing legal aid in five areas for nursing home patients. The legal aid will also be available to the elderly in the community. The areas which we chose are those which required the greatest assistance. These are the areas of providing for the appointment of a conservator, the appointment of a guardian, guidance in incompetency issues, guidance where access to nursing homes has been denied, and assistance in preventing the involuntary nursing home transfers. Legal aid is also provided to assure that fair hearings procedures are followed. Finally, assistance in home ownership issues, so that the elderly may be informed as to the availability and procedures to be followed in obtaining assistance in tax abatements and in tax deferrals.

We concluded that it would be practical to develop a handbook in these five areas of concern for the elderly, and we are now in the process of its completion. This handbook will be distributed very shortly through the Home Care Corp. and area agencies on aging, which will assist in developing local resources.

A survey was made of the Commonwealth of Massachusetts through which we determined that the cape and islands area offered the best possibility of success on an initial local resources project. Working with Dr. Jim Peace and with Margaret McAdams, we initiated the activity in the Hyannis office of the Home Care Corp. The pattern

which will be developed in the Home Care Corp. on the cape and islands will be used to develop a similar program in the other seven public health regions where Home Care Corp and area agencies on aging will provide legal aid to the elderly.

In certain areas, we have found that more assistance is needed than in others—for instance, in the area of conservatorships and involuntary transfers, and in the use of paralegals. We believe that vast new areas of assistance can be opened up to aid the elderly by pursuing these objectives and we intend to so do.

I think, further, that this testimony fairly well sums up my comments for this morning.

Impact of Transfers on Patients

Senator Kennedy. Very good. Mr. Donovan, what about the transfers; could you tell us a little bit about that?

Mr. Donovan. Senator, I would be glad to elaborate on that point. We have found that elderly people are admitted to some nursing homes, and I stress some nursing homes, because this is not characteristic of the entire nursing home industry, and are kept only as long as they or their relatives can pay the cost of private care. They are admitted when they have a sum of let us say $12,000 or $15,000 in personal property, $10,000, $12,000, or $13,000 more than the maximum allowed under the criteria for public assistance. They are often asked to sign a contract under the terms of which it is stated that they will not be kept in the nursing home as publicly assisted patients. These patients pay an average amount of let us say $1,000 a month. Let us assume that for the purpose of this comparison that they had $12,000 in personal funds upon admission. About the end of the 10th month, when their funds have been spent and they have only $2,000 remaining, and where they now meet the criteria for public assistance, they are told that they must transfer out of the nursing home. They are told that the facility cannot keep them. Now, this harsh action causes unbelievable worry, trauma, and concern and a feeling of rejection. It is discrimination of the worst type in my view. It also creates two classes of citizens. The first-class citizens who can pay for their private keep in a nursing home and second-class citizens who are turned out when they become the beneficiaries of public assistance.

These elderly people, who are now nursing home residents, have, during their long and useful lives, paid their taxes, social security, raised their families, and have been upright, productive members of the community. But, they are not permitted to remain in the familiar surroundings of the nursing home where they have paid their way. Because they are no longer private paying residents, they are told that they must transfer out of the facility.

I believe, sir, that such contracts should be eliminated. I believe that this practice should be eliminated without a contract. There should be no discrimination when one passes from private pay to public assistance, and I believe that at both the State level and at the Federal level steps should be taken so that this very unhealthy practice can be eliminated. [Applause.]

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AVAILABILITY OF NURSING HOME BEDS

Senator KENNEDY. How many nursing home beds are available? How many on the waiting list in the State of Massachusetts?

Mr. DONOVAN. It is extremely difficult to determine because there is not a viable process in the Commonwealth for the constant updating of availability of nursing home beds. However, the computer arrangement in Westboro is rapidly approaching the point where the department of public welfare, which has the statutory responsibility in the Commonwealth of Massachusetts for placing publicly assisted patients, will be in a position to determine availability on a weekly basis. However, sir, I can say this; that a survey made by the department of public health in cooperation with public welfare about 2 years ago indicated that it requires an average of 7 weeks for a publicly assisted patient to obtain a nursing home bed when he or she is in an acute care facility and ready for discharge, as against an average of approximately 10 days or 2 weeks for private paying patients similarly situated. I believe you can see on the basis of these figures, which can be amply supported, that although I cannot tell you the exact number of beds, I can tell you that there is discrimination and that there is a feeling of rejection developing in the acute care hospitals just as it is in the example which I gave you of the nursing homes involuntary transfers.

Senator KENNEDY. Mr. Spangenberg.

STATEMENT OF ROBERT SPANGENBERG, ABT ASSOCIATES, CAMBRIDGE, MASS.

Mr. SPANGENBERG. Senator Kennedy, as you indicated I was for some years the executive director of the Boston legal assistance program and for the past 19 months have been working on a study of the legal needs of low-income people in the city of Boston; low-income people making up the 45,000 to 50,000 families in the city who qualify under the guidelines of the legal services program for the city of Boston.

We discovered very early that because of the unique needs of the elderly, a portion of our time should be devoted to studying solely the legal needs of the elderly in the city of Boston. I might say that this program, the study, was sponsored by the Boston Bar Association as a public service.

I think, also, I would like to mention a couple of other things in reference to the prior discussion that was had. I want to draw your attention to two specific things that we did. The first thing was we wanted to get a good fix on the kinds of problems the elderly have, and we did that two ways; First, we conducted a door-to-door questionnaire, which turned out to be a 28-page questionnaire, to 500 low-income families in the city of Boston, and of the 500 that we spoke to, we found that in 83 of these 500 households, there was at least one person of the age of 65 or above.

Consequently, we were able to talk with a number of elderly people making up about 16 percent of the sample of the survey. In reviewing the quantitative type of sample, you find, by the way, really two

focuses. The first was to look at the life of the low-income person over the past 5 years to find from their standpoint specific kinds of legal issues they had to face in the last 5 years. And second, to suggest to them a number of other kinds of problems that they had not recognized as legal that might require the attention of a lawyer or a legally trained person. So, we did that from their own recognition of legal problems. Beyond that I might add that when we talked about other kinds of problems, we talked in terms of something like four times the number that low-income persons recognize as legal problems that might conceivably be legal if the lawyer were available.

In addition to the analysis of the collection of that data, we went around from neighborhood to neighborhood in the city and spoke to a large number of community agencies; social service agencies, that deal with the problems of the elderly. As a matter of fact, we had an opportunity to discuss this aspect with more than 250 agencies throughout the entire city who were concerned about the delivery of social services to low income people.

Two Most Serious Legal Problems of Elderly

Now, based upon both aspects of the work, the questionnaire and the neighborhood interviews which, incidentally, came out the same, we determined, based upon our findings, that the two most serious problems brought to our attention in regard to the legal problems of the elderly were housing and income maintenance. Housing in two or three particular aspects; namely, evictions, rent increases, and code violations. And income maintenance, particularly with SSI, and medicaid.

We found—which I am sure is no surprise to people—that there are many low-income citizens in the city of Boston who qualify for SSI benefits, and were either not aware of the fact that they qualified or are not aware of what the qualifications are for SSI, and there is a large number of the elderly population who with some assistance and education should be receiving the public benefits provided by the Federal and State governments.

Medicaid Bureaucratic Problems

In the area of medicaid, we found a number of people who even today are having difficulty getting a doctor to give them care under the medicaid program, and all kinds of bureaucratic problems relating to medicaid, pay of the doctors, et cetera. We found those to be the two most prevalent and serious problems. Three additional categories were, first, relating to the question that Mr. Donovan spoke about, that is, conservators and guardians. This is a very serious problem in this State to find people who are qualified and have the interest in the elderly uppermost in their mind. This is a very serious problem.

We have the day-to-day living problems that the elderly face, which are not seen as quickly as the larger problems, such as consumer problems, assistance in drafting wills, questions relating to vandalism, and another very serious problem, and that is utility bills.

And, finally, there is a discussion of the special problems of 45,000 people who are living in nursing homes in the city of Boston, which is a figure that was supplied to us. Now, as far as the legal resources that are currently available in the city of Boston are concerned, the principal organization is, once again, the Federal legal service program, Greater Boston Legal Services, which has two aspects to it; the first is the day-to-day services which are provided by the six offices throughout the city, but that is a very, very small effort. The second part of it is the Council of Elders Legal Services program, which is operated in cooperation with Greater Boston Legal Services, which has an office in the Moreville House, but again, they only have four lawyers in that program which is intended to serve a very wide population, not nearly enough resources in terms of full-time attorneys.

Free Legal Services

Now, one of the things that we did in relation to the discussion of your prior panel, is in the course of our study, we contacted some 2,700 private lawyers who practice in the city of Boston. We asked them specifically to give us information about what kind of free legal services they had provided in the course of their practice over the last year. Even more important than that, in what kind of legal service, free service, as officers of the court, as members of the bar, they would be willing to contribute over the next 12 months. And it may well be that their response on paper will not meet the real need, nor will it meet the realities of the matter, but I can tell you that we surveyed 2,700 lawyers, and only about a third indicated that they had done any free legal services to older people in the past year, and yet two-thirds indicated a concern or willingness to provide some sort of service, so I think that what we all must do is to look at this resource, because I don't think that the Federal funds are going to sufficiently answer the total problem. If there are a large number of private lawyers out there who are willing to provide some sort of service, then I think the joining up of the public and the private bar in this effort is absolutely necessary.

Senator Kennedy. How are we going to do that?

Mr. Spangenberg. Well, I think—excuse me.

Senator Kennedy. How do you recommend that that be done? You have given us the figures, what do you need to get the two-thirds more involved who are being asked to participate?

Mr. Spangenberg. Well, one thing that we could do is to require that as a matter of admission to the bar that a lawyer devote a certain percentage of his practice to this service.

Senator Kennedy. That is a good idea, but we don't need Federal legislation to do that. That has to be done either by the local bar association or the State bar association.

Mr. Spangenberg. Or the Supreme Judicial Court in Massachusetts. They regulate the practice of law.

But I think I see somewhere down the line, although the American Bar Association has a special committee that has been working in that area, I think there needs to be a joint cooperation between those agencies that deliver these services and the Boston Bar Association.

Pressure has to be exerted through someone like the bar association. If it decides to do these things, it has a tremendous amount of power. Things will happen, and I think that pressure has to be put on that organization and I think they are ready to respond.

Senator KENNEDY. The bar association ought to be encouraging these legal services without being further jarred by people from the outside. But I will be glad to raise this. Will you make that study a part of the record?

Mr. SPANGENBERG. I certainly will.*

Senator KENNEDY. That will be helpful, and then we will get in touch, I will get in touch with the association and ask them what they would be prepared to do to try to take advantage of it. I want to hear from our other witnesses, unless it is on this point, Mr. Donovan.

Mr. DONOVAN. It is on this point. I would like to give an example of the type of cooperation which might be expected from the bar association. A short while ago we received a call from a social worker at Boston City Hospital. She said that a retired city of Boston employee was living in the Pine Street Inn and that he had $9,000 in retirement funds available to him, which he was seeking to obtain in one lump sum.

Now, I think you will agree that if you give a retired worker $9,000 in cash and let him carry it to the Pine Street Inn it would be just the same as exposing him to robbery or to other serious personal harm. We went to the judge of the probate court and asked him to speedily appoint a conservator. We then went to the secretary of the Boston Bar Association to ask if he would help us in obtaining the assistance of an attorney to file a petition for conservatorship, pro bono.

Within 4 days, and still keeping within the requirements of notice, a petition was filed. In 9 or 10 days a conservator was appointed and this man was protected from himself. That was a worthwhile approach and an example of what can be done by the bar association when one seeks their support. That is all.

Senator KENNEDY. Mr. Wall.

STATEMENT OF GERALD D. WALL, STAFF ATTORNEY, COUNCIL OF ELDERS LEGAL SERVICES, BOSTON, MASS.

Mr. WALL. Thank you, Senator Kennedy, Members of the U.S. Senate Special Committee on Aging. As a staff attorney with the Council of Elders Legal Services program, I have been exposed to a considerable variety of problems facing the elderly in the city of Boston. Often, the existence of a legal problem is clear. The older person has been served with a legal paper saying that a lawsuit against him has been started; they have been notified of a cutback in a Government benefit and the notice says that they have the right to appeal to an administrative hearing officer or to a court; or they have been harmed in some way and they would like to take some legal action of their own to collect damages. There are many variations of these situations.

*Material not received at time of this printing.

However, there are many other situations in which the need for legal help may not be so obvious. The person knows he or she has a problem, but does not know where to turn for help. The person knows he or she has a problem, is aware that there is help available, but for one reason or another is afraid to seek out that help. Probably the most blatant example of persons whose legal problems are ignored are residents of nursing homes and rest homes. Less obvious is the example of the shut-in, who is not able to or who, due to isolation, does not seek out help.

As far as I am concerned there is a solution to these problems. First, adequate legal services must be available. Second, older persons must be educated that the services are there and that they don't have to be afraid to use those services.

Legal Problems Facing Older Americans

Up to now I have been rather general in my presentation of the problems encountered in delivering legal services to the elderly. I will now be more specific as to the type of legal problems facing older persons which I feel should be addressed by this committee and by persons and groups interested in the legal problems of the elderly.

For example, the elder does not know that he or she is receiving the correct amount of supplemental security income or some other Government benefit to which he or she may be entitled. It may not be possible for the older person to determine if the benefit is accurately calculated, and, even if the older person does seek an explanation, it may be filled with such complex terminology that he or she cannot understand how the determination was made.

Then there is the case of a person who applies for supplemental security income and is told that he or she cannot possess more than $1,500 in liquid resources if single or $2,250 if married, or own a home worth more than $25,000. Instead of allowing the applicant to be more self-sufficient and to feel an entitlement to these minimal benefits, he or she is stripped of the few resources that were accumulated over a lifetime and now is totally dependant on the Government bureaucracy.

One of the more disturbing situations is that of a person who begins to have difficulty managing his or her own affairs. The only persons available to provide assistance would do so solely for their own gain. Although the older person should be able, with minimal help, to live his or her own life in their own home, he or she is forced to either live in a nursing home or find himself or herself under the control of a hostile person.

No less disturbing is the plight of the older person who is fully capable of handling his or her own affairs but has limited income. The rent has increased because he or she has moved and the home is no longer covered by rent control. They are faced with accelerating gas, oil, and electricity costs and are further threatened by the possibility of a large property tax increase which the landlord assures them he will pass on to the elderly tenant. The older person applies for public housing but is told that the waiting list is so long that this is impractical.

The older person who resides in public housing, but has been told that his income has been reviewed and his rent must now be increased

substantially, also has a problem. This is the very situation presently faced by elderly persons and others who are tenants of the Boston Housing Authority.

BOSTON HOUSING AUTHORITY RENT INCREASE CASE

On or about June 30, 1976, numerous tenants of the Boston Housing Authority were notified that their rents would be increased in accordance with a review of their income. Among the tenants are a substantial number of older persons, for whom, in many cases, the rent increases represent a significant financial hardship. Our office, and other offices of the Greater Boston Legal Services, received numerous complaints about the proposed increases. As a result a lawsuit was filed against the Boston Housing Authority during the week of July 26, 1976. That same week, the Boston Housing Authority decided to delay the increases until a further review takes place. On July 29, Judge E. George Daher of the Boston Housing Court enjoined the Boston Housing Authority from further implementation of the rent increase until the court determines that the proper procedures are being followed.

The lawsuit does not challenge the legal right of the Boston Housing Authority to raise rents. Rather, it challenges the method by which the rent increases were being implemented. In particular, the lawsuit asserts that affected persons must be given adequate explanation as to how their rent increases are computed and an opportunity for a meaningful hearing prior to implementation of the increase. This is particularly important because many tenants' rent were incorrectly calculated. What is asked for is no more than the tenants are entitled to under the State regulations governing public housing, and the due process clause of the U.S. Constitution allows.

At the present time rent increases are suspended. Negotiations between the housing authority and attorneys for the tenants are in progress in an attempt to reach agreement on a procedure which will adequately protect the interests of the tenants. Thank you. [Applause.]

Senator KENNEDY. Just as a point of information, the hearing is going to adjourn at 11:40, so we have about 17 or 18 more minutes left here. However, if you have to leave, feel free to do so. OK, Mr. Bergman.

STATEMENT OF JAMES A. BERGMAN, NEW ENGLAND REGION DIRECTOR, LEGAL RESEARCH AND SERVICES FOR THE ELDERLY PROGRAM, NATIONAL COUNCIL OF SENIOR CITIZENS, INC., BOSTON, MASS.

Mr. BERGMAN. Thank you, Senator. My name is James Bergman. I am with the legal research and services for the elderly program, which is part of the National Council of Senior Citizens. Since I have been given permission to submit written testimony, I will do that and will summarize my comments from the written testimony.[1]

[1] See p. 178.

First, I think that most of the people who have testified today have eloquently stated what the problems are that are faced by older people which require legal assistance to resolve. I think that Mrs. Cass and Frank Manning have done a very eloquent job and the last thing I am going to try to do is to improve upon their comments. Instead, I would like to talk about the response in New England, and especially in Massachusetts, to the legal problems that have been pointed up here today.

It is interesting to me that New England, as well as probably California, according to most people who are knowledgeable, are supposed to be the leaders in the country in providing legal services to older people. In fact, that probably is the case, but I think it is one thing to be a leader when the competition isn't too tough, and it is another thing to be a leader when the competition is tough. In this case, I am afraid the competition is exceedingly weak.

New England may, in fact, be a leader in providing legal services to the elderly and to low-income people, but the fact is that the response has been exceedingly meager. I would like to highlight three programs that have been especially good in providing legal services to older people to point out what can be done when a good program is funded. I might add that the interesting thing is that the programs that have been funded over the last 8 or 9 years have almost exclusively been funded by either title III of the Older Americans Act or by the Office of Economic Opportunity through the original LRSE program. I might add that I was fortunate enough to have been the director of the original Council of Elders legal program where Mrs. Cass helped teach me about the ways of the world. I may have been born and raised in Wisconsin, but I grew up under Mrs. Cass and the Council of Elders.

Council of Elders Legal Program

As I said, the Council of Elders legal program was funded by that original OEO program, and the other programs that I will mention have been funded exclusively by title III of the Older Americans Act. And that by itself, I think, tells a little bit of a story of how legal services for the elderly have developed in this country.

The original Council of Elders LSRE program, which began in 1969, was somewhat unique in three different ways at that time. One was that it hired older people as paralegals, and found out very quickly that that was probably the best way to do outreach. It was also one of the best ways to find and help older people.

Second, it took an approach that I think was different from most of the programs in that it hired a downtown law firm instead of having staff attorneys. Thus, with a combination of older people as paralegals—and I think the oldest at the beginning was 79—and a downtown law firm which was an exceedingly strong law firm in the city, the legal project had a very good one-two punch.

The third thing, the program, while it handled direct cases, focused very much on legislative activities as a means of attempting to resolve problems affecting many elderly persons. For example, while it may be that a person's major problem is income, once you have gotten him adequate social security benefits and old age benefits, this person still

might be living on nothing more than about $210 a month. Now, that is pretty inadequate, and maybe the best solution is to go to the legislature and fight for increases in old age benefits, which was one of the things at that time the program did, along with groups like Frank Manning's organization.

We also worked with Frank on drafting the original legislation to set up a State Department of Elder Affairs, feeling that if we could focus attention at that high a level in State government, we could probably get better and more resources for older people. I think that the Council of Elders legal program demonstrated that legislative action is a very important part of any legal program for older people, because the program can hit the problems of thousands of people in the same time span that it would take to handle maybe 5 to 10 individual cases.

Cambridge-Somerville Legal Services

Another example of a way of approaching the legal problems of older persons has been carried out by the Cambridge-Somerville legal service program under a title III grant for the last 2 years. That program is focused very much on what is called high impact litigation, or class action suits. And it has been successful in getting a Federal judge to order the Cambridge office of the Social Security Administration to take no more than 45 days to process SSI applications for persons who are not disabled. As most of you know, when SSI came into being, we all received tens and hundreds of complaints from people who filed their applications, but it took months and months to get those applications handled so that the persons could get on SSI.

In one class action suit the Cambridge office was ordered to process all applications within 45 days, and now they somehow are able to do it in 30 days in most cases. I think it proves the point that you can use that kind of litigation to get the job done for more than just one person. That same program also filed a suit which challenges the privacy issues created by title XX applications. The suit basically makes the point that if you require people to give information that they don't want to give—and I think Mrs. Cass very eloquently put it, that older people don't always want to tell you everything—that they will often refuse to provide the information even if it means that they will be denied services which they need. I think that while that case is still in court, it has highlighted some very important issues, and Congress has already begun to respond to some of the privacy issues.

Statewide Legal Service Programs

A third kind of program that has been started, and in fact runs in New Hampshire, Vermont, Maine, and Rhode Island, is statewide legal service programs which handle mostly individual legal problems of the elderly. Normally these programs have begun under a title III grant to hire an attorney who is also the director, and then they supplement the programs with VISTA volunteers and CETA employees who serve as paralegals. The result in those programs in each case is that they handled individual cases so that more and more older people could get access to legal services.

The New Hampshire program, I think, is a good example of how that can be done. The program is operated by New Hampshire Legal Assistance, but has a special elderly component within it so that when people apply, they are not applying necessarily to New Hampshire Legal Assistance, which some older people may have objected to because it is a so-called poverty program, but they are applying to a specific program which serves the elderly. While the legal project staff may use the New Hampshire Legal Assistance offices as their base, they go to meet elders in title VII meals sites, in senior centers, in elderly housing units—anywhere that older people might be. The attorneys and the paralegals go to these group sites, but they also go to the homes of senior citizens, and when you are dealing with rural areas, the willingness of a legal program to go to the home and to the apartment of an individual is critical if the program is going to serve people who need services. To sit in one office in Concord, N.H., would never serve the people of New Hampshire.

I think these programs have been very successful, but again, the response has been meager in Maine, Vermont, New Hampshire, and Rhode Island, which all have statewide legal programs. Legal programs for the elderly in these four States have a total of 10 attorneys, and 13 paralegals, for an older population of over 525,000 people. This is the model for the country, and yet those are the figures which confront us.

Seven Lawyers for 937,000 Older Persons

In Massachusetts, we have seven lawyers and 12 paralegals for over 937,000 people over 60, and of those seven lawyers, four of them are in Boston, and of the 12 paralegals, 9 of them are in Boston, so that the model for the country is a very meager model. The programs may be doing a good job, but you can see the coverage.

I think it is legitimate, though, to mention what the legal service programs are doing that are not specifically geared to the elderly. Basically, the response is the same as it was in the late 1960's when OEO estimated that about 6 percent of the total caseload for legal service programs, for OEO programs, was elderly. In talking with legal service programs in the New England States in the last 6 months, we determined that basically that has not changed. The average still runs from 4 percent to 10 percent of the total caseload. Thus, there has been virtually no change in the last 7 years in the proportion of older people who get served by legal assistance programs, and yet the elderly population has risen by 1 to 2 percent up to about 15 percent of the total population, and the elderly still represent about half again as many poor people as younger people do. It appears that legal service programs which are supposed to focus on low-income persons are, in fact, not making such a response in terms of the elderly. I would wholeheartedly endorse the Senator's suggestion that the Legal Service Corp. be mandated by law to begin to provide services at least in proportion to the number of low-income persons in the population, because I think there is no other way they are going to respond as quickly as they need to.

I think on their side it can be legitimately said that up until a year ago those programs were funded basically at the same level they had been in 1969, but now that they are getting increased funds, I think more action should be taken.

Private Bar Association's Response

I would like to deal very briefly with bar association's response by citing a case that recently came to my attention. A gentleman in western Massachusetts who is 67 years old, happens to be blind, hard of hearing, has a pacemaker, and walks with crutches, only with great difficulty. The gentleman just recently had a complaint filed against him in court for stealing a dog. It just so happens that the gentleman denies that he stole the dog, but does admit that he would like to have that dog because he thinks it's the same German Shepherd that he had raised and trained himself to be a seeing eye dog, and which was either stolen from him or else ran away.

In any event, the person who finally ended up with the dog had it stolen from him and has now filed a complaint against this gentleman, thinking, in fact, that he tracked it down and wanted it back so he took it. The gentleman, I also should mention, is on SSI, so he is not exactly a wealthy individual. When he went to court he asked for a public defender to be appointed and was told that they would like to but unfortunately he had too much money in the bank, so no public defender.

He then went to Western Massachusetts Legal Services, the Legal Service Corp. funded program, and was told that they also would like to help him, but unfortunately it was a criminal complaint and by statute they can only handle civil complaints.

The gentleman, knowing that he was going to have to appear in court, and knowing that if he didn't appear he would probably be convicted, or stood a good chance of being convicted, sought out through the Home Care Corp. in western Massachusetts, a lawyer, and finally found a private attorney who said that he would be happy to take the case for the nominal fee of $200 on a complaint that was for theft of property worth less than $100. The gentleman is going to retain that attorney. He is going to go to court. He is going to pay that $200 out of his own pocket because it is the only way he can get justice done. And yet I think it typifies some of the problems in the response of the private bar in this State and other States.

Inflexibility of Fee Schedule

The three major things that the case highlights are: (1) The inflexible nature of the fee schedule which the private bar maintains, and the fact that in many cases the private attorneys are not willing to take into consideration the needs of the individual client that they are dealing with; (2) I think it points out the inflexible nature of some of the federally funded programs that provide legal services; while I understand the need to set certain levels so that the programs don't promise more than they can deliver, there must also be some flexibility built in so that when a gentleman like this comes in he

doesn't get denied service; (3) the third point is that as title III begins to fund more legal programs for the elderly, there is going to be more pressure from the private bar, I am afraid, to indicate that there ought to be some kind of cap put on it, some kind of means test, some kind of limitation, so that private attorneys do not have their place taken by Government funded attorneys. I hope that this case will point out the necessity for never putting that kind of limitation on the title III program. If there had been a title III legal service program in western Massachusetts it could have served this gentleman, because it would not have had limitations, income or any other kind of limitation, except need.

Senator, I think I have probably gone beyond my time. I would like to mention one other thing, though, and that is that one of the real needs, when you have this few attorneys working on elderly problems, is for legal backup centers or resource centers where attorneys can specialize in problems of the elderly so that they can be on call to the programs that are serving elderly individuals directly.

I think that a very good case example is the SSI advocacy center.

Senator KENNEDY. I will give you another minute.

Mr. BERGMAN. OK. The SSI advocacy center has been funded for 2 years by the State department of elder affairs through title III. It has focused specifically on SSI cases, and it has done an outstanding job of handling 50 to 100 cases a month. Now, because the State agency will not have additional funds for them, they will have to cut off services for older people on September 30.

I think this is the kind of program that should be continued as a backup center. If there is anything which you can do, Senator, to impress upon the Administration on Aging the need for continued funding of the center, it would be much appreciated. Thank you.

Senator KENNEDY. An excellent statement. SSI is an interesting story. The Social Security Administration stated that they were going to need about 14,000 new personnel when they put SSI in. They wanted those personnel so there wouldn't be delays and redtape. OMB turned that down. As a result, we have an administrative nightmare. At the same time the administration was recommending 300,000 public service jobs. What they should have done is requested 285,000, put the 15,000 in running the social security and taken it off of the backs of the elderly people here in this country.

That is the kind of basic and fundamental mismanagement that affects the elderly. I am sure our panel throws up their arms about governmental inefficiency, inequity, and unfairness.

At this point in the record, the prepared statement of Mr. Bergman will be inserted.

[The statement of Mr. Bergman follows:]

PREPARED STATMENT OF JAMES A. BERGMAN

As you are aware, the legal research and services for the elderly (LRSE) project of the National Council of Senior Citizens is presently funded by the Administration on Aging to assist State and area agencies on aging and the legal profession to develop new and expanded legal services programs to serve elders. Secondly, the LRSE project provides specialized assistance to agencies on areas of law especially relevant to older persons.

In my testimony I will draw upon my own experiences in the field of law and aging and even more so upon the substantial experiences of the LRSE program since its inception in 1968 under the direction of Mr. David H. Marlin. I will attempt to provide a brief overview of the legal problems which especially confront elders in Massachusetts, as well as in other parts of the country, the role that lawyers and paralegals can play in helping senior citizens to overcome these problems, and some indication of how fully that need is currently being met by the existing legal service system and the barriers that presently prevent that need from being more fully met.

LEGAL PROBLEMS CONFRONTING THE ELDERLY

Not surprisingly, since income, health, and housing are essential for sustaining life, these are the three most important problem areas which older persons confront which often require legal action to resolve. Since others will discuss these problems, I will not say anything more about them. Instead, I would like to discuss briefly three not so well publicized problem areas elders confront which require legal help in many cases to resolve.

First, the elderly are frequently silent victims of consumer frauds and abuses. Like younger persons, the elderly are prone to signing contracts for home repairs or land sales without reading the fine print. But, senior citizens are particularly and more uniquely vulnerable to consumer abuses in the purchases of hearing aids, prescription drugs, mail order or newspaper-advertised insurance policies, eyeglasses, dentures, wheelchairs, funeral arrangements, retirement villages, and cures for arthritis and cancer. For a variety of reasons, including lack of mobility and embarrassment that the "wisdom of age" did not protect them from being taken, elders all too often silently endure the financial burden of consumer abuses instead of seeking legal counsel to obtain relief.

As an example of the kind of consumer frauds faced by older persons, I would like to cite a case we discovered this spring.

An elderly woman from Cambridge, Mass., went to a "free hearing test" offered by National Hearing Aid Centers where she was tested and informed that she needed two hearing aids. While the woman insisted that she did not want to decide anything that day, the dealer put wax in her ear to make an ear mold and asked her to sign her name and address. Without realizing it, she had signed a contract to purchase one hearing aid for $429. The next day, she called the dealer to state that she definitely did not want the hearing aid. The dealer insisted that she try the aid for a day and that if she didn't want it, she could return it. Instead of allowing even the promised 1-day trial period, the dealer, upon delivery of the aid, insisted that the woman pay in full for the aid, which she did under the high pressure of the dealer. The woman subsequently made several attempts to get the dealer to take the aid back, but he avoided her. Finally, she retained a lawyer with her own funds, and as a result she got $300 back. Thus, even though a doctor certified that the woman did not need a hearing aid, and even though she finally got some of her money back, she lost $129 for the hearing aid, plus the legal fees.

This is just one of 47 such documented hearing aid cases which our LRSE project uncovered in 8 weeks this spring as we prepared testimony for presentation before the Federal Trade Commission at hearings they held in Washington on proposed hearing aid regulations. While in the case I have cited, the person finally sought legal assistance, this is unusual. Embarrassment at having been swindled and fear of being considered to be incapable of handling of their own affairs often stop senior citizens from seeking assistance, especially legal assistance, when consumer abuses occur.

A second area of great concern, which most people do not presently recognize as a problem, is the treatment older persons receive from the utility companies. First, the constantly increasing telephone, gas, and electric rates and the rate structures which penalize small users versus large industrial users eat away at the fixed incomes of older persons, but these are services which senior citizens cannot do without. Secondly, utility companies more often than we realize do in fact discontinue essential service to older persons even when the outstanding bills are so small that they cannot reasonably justify health-destructive shut-offs. Making this an even more serious problem is the fact that in Massachusetts, telephone service may be terminated without a hearing for the person affected.

Finally, in many States, the laws concerning guardianships, conservatorships, powers of attorney, and medical commitment procedures do not protect the elderly individual so much as they protect the estate of the persons for his/her heirs or they provide a means of physically isolating a "problem" person from his/her family or neighbors.

THE RESPONSE IN NEW ENGLAND TO THE LEGAL PROBLEMS OF THE ELDERLY

In response to these problems some excellent and innovative legal programs specifically for the elderly have developed in New England in the past 7 years. Interestingly, these programs have all been funded either through the original LRSE program which the Office of Economic Opportunity first funded in 1968 or through title III of the Older Americans Act. In some cases the title III funded programs have been significantly supplemented by ACTION funds, for VISTA lawyers, or persons who were later trained as paralegals, and by CETA funds.

As you have already heard today, the Council of Elders Legal Program in Boston was one of the original LRSE projects funded by the National Council of Senior Citizens in 1969. Like the other original LRSE projects throughout the country, it served both as a direct service program and as a model for future programs to follow. Today, the program is funded by the Legal Services Corporation and is sponsored by the Council of Elders and operated by Greater Boston Legal Services.

The CoE LRSE project was one of the first to use elders as paralegals, and it continues to do so today because their value has been repeatedly demonstrated, as Dick McCusker has already indicated. Unlike many of the original LRSE projects, the CoE project concentrated on legislative action to meet the needs of many of the older persons it represented. Backed by the CoE board of directors—which was 100 percent elderly—The CoE legal project played a significant role, along with Frank Manning's Legislative Council for Older Americans, in getting increases in old age assistance and in creating the cabinet office of elder affairs in Massachusetts. Speaking as the original director of the CoE legal project, I think the program demonstrated beyond any doubt that a major activity of legal programs for the elderly should be legislative action.

Taking a law reform approach, the title III funded Cambridge/Somerville legal services program for the elderly has concentrated much of its activities on high impact or class action litigation. It has been quite successful in this approach in that it has gotten a decision from the Federal district court requiring the Cambridge social security office to process all nondisability SSI applications in no more than 45 days. As you know, some older persons SSI applications took months to be processed, causing great hardship to the elderly person so affected. In addition, this legal project has filed a suit which challenges the Massachusetts' title XX application forms, charging that the information requested is an invasion of the older person's right to privacy. Both of these suits, and others like them, when successful can provide relief to hundreds or thousands of elders.

In Maine, Vermont, and New Hampshire, statewide legal projects for the elderly have been established through title III funding. Each of these projects has used the title III grant to hire a lawyer to direct the legal program and to pay for some of the support costs, and has then supplemented the title III funding with VISTA's or CETA employees.

The New Hampshire program, which is a part of New Hampshire legal assistance, has been operating since November 1975, and consists of a lawyer/director and seven paralegals, four of whom are elders. The project has concentrated so far on handling individual cases and has done a very effective job of outreach by having its paralegals establish office hours at title VII nutrition sites, at elderly housing developments, at senior centers, and at other locations frequented by older persons as well as utilizing New Hampshire legal assistance offices. As in Maine, the New Hampshire elderly legal project director circuit rides throughout the State to supervise the paralegals and to represent clients who require a lawyer's services.

The Vermont legal aid program for the elderly was funded in May of this year and is now beginning to handle individual cases. This program consists of one experienced lawyer/director and six VISTA lawyers. The VISTA lawyers will each be based in an area agency on aging office, but will also have office hours in locations such as the New Hampshire and Maine programs.

Each of the projects that I have described has attempted—successfully, I think—to establish legal programs which are specifically identified as being for older persons and have purposefully set up office hours in locations used by elders. Each has also made a special outreach effort, and each makes it a practice to make house calls.

Thus, while some of the projects specialize in handling mainly individual cases, some concentrate on high impact litigation, and the original CoE LRSE program focused on legislative action, each places the special needs of the older person foremost in the way in which the services are made available. Again, the use of elderly paralegals has been a major means of doing this.

As I stated initially, all of these projects are either title III funded or were initiated by the original OEO/LRSE program. And, as successful as these programs and three similar ones in Massachusetts and Rhode Island are, together they represent a very meager response to the need for legal services for the elderly. In fact, together the four statewide legal programs for the elderly in Maine, Vermont, New Hampshire, and Rhode Island have a total of 10 lawyers and 13 paralegals to specifically represent a 60+ population of 523,804 persons. Massachusetts, with a 60+ population of 937,247, presently has five elderly legal projects consisting of 7 lawyers and 12 paralegals, with 4 of these lawyers and 9 of the paralegals serving Boston only.

In the past 8 months our LRSE project has worked with State and area agencies on aging, legal service programs, older persons and others to develop title III applications for new and expanded legal projects for the elderly. Hopefully some of these will be funded this year. However, even if all of the Massachusetts projects were funded, these new projects would together have barely double the present number of lawyers and paralegals in the existing elderly legal projects.

So far I have mentioned legal projects that serve only the elderly, and I have not mentioned persons who are served by legal assistance programs funded by the Legal Services Corporation or persons who retain private attorneys. In my work with legal assistance programs in recent months, all of them have stated that they recognize that they presently serve a disproportionate number of low income younger persons versus senior citizens. This has been true since the beginning of these programs in the 1960's, and it has been impossible to change significantly until now due to the previous lack of any increases in legal services funding and the fact that the caseloads were already filled.

Figures from OEO for the late 1960's indicated that nationally the elderly 60 and over were receiving only about 6 percent of the legal services provided through OEO funded legal services programs. Yet, in 1970, an estimated 14.1 percent of the total population was 60 and over, and most studies indicated that half again as many older persons as younger persons had incomes below the poverty level.

As of today, nationally, close to 15 percent of the total population is age 60 and over (in Massachusetts, 16 percent of the population is 60+), and older persons continue to be disproportionately represented among those persons living below the poverty level. Yet, legal service programs in New England themselves estimate that persons 60 and over receive only between 4 percent and 10 percent of their total services, which, I should reemphasize, are focused on low income persons. Some examples of estimates of the percentages of elderly persons served by legal assistance programs are the following: Greater Boston Legal Services, 10 percent; Western Massachusetts Legal Services, 4 percent; Central Massachusetts Legal Services, 5 percent; Legal Services for Cape Cod and Islands, 5–10 percent; Vermont Legal Aid, 6.5 percent; and New Hampshire Legal Services, 6 percent.

Thus, while legal assistance programs presently provide some services to low income elders, they need to make a concerted effort to increase their proportion of services going to older persons. Now that some increased funding from the Legal Services Corporation is available, these programs should build upon the experiences of the elderly only legal projects to increase their services to older persons. In fact, Congress should seriously consider mandating that this occur.

At this time, most bar associations admit that they do not know how well the private bar has responded to the legal needs of the elderly. However, I believe that some conclusions may be guessed at based upon the experiences of social service agencies serving the elderly and based upon the income levels of older persons. First, since so many elders have low, fixed incomes, and since lawyers

and bar associations have resisted advertising their fees or adopting sliding fee scales based upon the incomes of clients, I think we may reasonably conclude that the private bar has not done any better, and probably worse, than legal assistance programs in serving the elderly.

Secondly, I personally know of very few social service agencies serving the elderly who have been approached by private lawyers who have offered to provide pro bono legal services to elders who need them. In the few cases where I know that that has occurred, they have usually been lawyers who sit on the boards of directors of the agencies and are willing to do some free legal work in emergency situations. Since Massachusetts alone has about 16,000 lawyers, according to Massachusetts Bar Association estimates, if pro bono services for the elderly were widespread, I do not think it would be as hard as it is to discover examples.

Estimated Need for Legal Services by the Elderly

So far I have discussed the types of legal problems older persons face and some of the response to that need in New England. I have not attempted to estimate the full need, simply because such estimates are difficult to back up. However, as quoted in *The Law and Aging Manual*, a 1974 American Bar Association/American Bar Foundation study estimated that 37.3 percent of the adult population has one or more legal problems per year (excluding traffic violations). If this is true, and for the elderly this may be a low estimate since so many elders are low income and dependent upon public benefit programs, then of the 1,461,051 persons aged 60 and over in the five New England States, 544,973 are likely to need some type of legal help each year.

According to a 1975 study quoted in *The Law and Aging Manual*, the experience of legal service programs has shown that about 325 cases per full-time attorney per year is reasonable. Based upon that estimate, approximately 1677 lawyers would be needed in the five New England States to meet the estimated current needs.

Broken down by each of the five States, the following figures apply:

State	60-plus population	Estimated number of persons needing legal services in a year	Estimated number of lawyers needed to meet this need
Maine	172,919	64,499	198
Massachusetts	937,247	349,593	1,076
New Hampshire	121,665	45,381	140
Rhode Island	158,677	59,187	182
Vermont	70,543	26,313	81
Total	1,461,051	544,973	1,677

I should note that the estimate of 325 cases per year per lawyer does not include consideration of time an attorney might devote to legislative activities or legal education programs which are also vital in meeting elders needs. Thus, the above estimates of need for attorneys are probably somewhat low.

On the other hand, if paralegals were available to assist lawyers in handling cases it would very definitely be possible to reduce the number of lawyers needed to serve the elderly. While it is difficult to estimate the number of cases a paralegal can handle per year, under the supervision of an attorney, it is not unreasonable to assume that 100 to 200 cases could be handled by a full-time paralegal, and in some cases the number may be even higher.

It should go without saying that the above estimated need is nowhere near being met presently.

Remedies To Meet the Need for Elderly Legal Services

The most basic requirement for fulfilling the unmet legal needs of older persons is, as always, money. This could be approached in two ways: (1) Provide older persons with a guaranteed annual income which is high enough so that they may purchase the essentials and the services they need, including legal services; or (2) provide much greater Federal support for legal services for the elderly.

Since I do not expect to see a guaranteed annual income for elders in the near future, and since this committee frequently hears the plea for more funds, I will only make four brief suggestions for Federal action now to increase funding for elderly legal services:

(1) The Legal Services Corporation should be mandated by Federal law to serve low income persons in direct proportion to their percentage of the low-income population, with age, race, and ethnic origin being the criterion by which this standard is applied. This would force a readjustment of the present inadequate service going to elders. Certainly such a mandate should be accompanied by increases in Legal Services Corporation funding levels.

(2) Congress has already taken very significant steps in the Older Americans Act amendments of 1975 by making legal services one of the four priority services under title III, and by continuing to increase funding for title III. If more funding is provided through title III and Congress reenforces its desire to see all four priority services funded, then additional legal service programs are certain to develop.

(3) In order to persuade the private bar to become more involved in serving the legal needs of older persons, Congress should study ways of establishing pre-paid or group legal services plans which in all probability would have to include at a minimum Federal regulation and at a maximum Federal financial support.

(4) Since elderly persons trained as paralegals have proven their value in elderly legal projects, Congress should encourage this approach by amending title IX of the Older Americans Act to strongly suggest that some of the persons employed under this program should be employed as paralegals in elderly legal projects—possibly projects funded by title III. In fact, in this hearing room today are many senior aides who are employed through title IX, and many of them have already expressed an interest in being paralegals.

There are other problems inhibiting the attempt to meet the need for legal services for the elderly which are not merely a result of lack of funds. I would like to cite a case which I recently learned about which illustrates some of the problems.

A 67-year-old blind man from the western part of Massachusetts has just recently had a criminal complaint filed against him charging that he had stolen a dog. He denies it, claiming that he does not have the dog, but wishes that he did since the dog he is accused of stealing is the one which he believes he trained himself to be his seeing-eye dog and which later either ran away or was stolen from him.

The accused gentleman is not only blind, he is hard-of-hearing, has a pacemaker for his heart, and requires crutches to walk. For financial support, he receives SSI.

When the complaint was filed against him, he asked that a public defender be appointed to represent him, but he was denied because it was claimed that he had too much money in his savings account—even though he qualified for SSI. He then went to Western Massachusetts Legal Services who also had to deny him service because the Legal Service Corporation does not allow the program to handle criminal cases.

Finally the man found a private attorney to represent him—at a cost of $200, for defense in a complaint charging theft of property worth less than $100. Seeing no other choice, the gentleman is going to pay the $200 out of his meager SSI income so that he can receive a fair trial.

A rare case? Maybe the man's physical ailments and the specific accusation are unusual, but the other circumstances are all too common. I would like to simply list some of the common problems this case highlights, and suggest some remedies.

(1) *Unreasonable income limitations:* While in this case, it was the public defenders who had the unreasonable income limitation, in many cases the Legal Service Corporation funded programs have equally low limits. While these limits are not totally without merit, if they are inflexibly applied, they can be very unreasonable, as in this case.

The Older Americans Act requirement that services funded through title III must be available to elders regardless of income is a much better approach.

(2) *Unreasonable fees of private attorneys:* The $200 fee being charged to the blind gentleman appears to have been set without any recognition of his financial situation, and in my opinion is outrageous. Unfortunately, this is just one more

example of the rigidity of the private bar's fee schedules, and their lack of willingness to take the initiative in both advertising their fees and specialties and in setting flexible fee schedules. I am not sure if there is a legislative solution to this problem, but certainly any pressure this committee can bring on the private bar in these areas would be a positive step.

(3) *Lack of unreasonable restrictions on elderly legal programs:* This case illustrates the wisdom in the title III programs which do not have income or any other limitations on who may be served, as long as they are elderly. If a title III legal program had been in existence in western Massachusetts, this man could have been served at no cost to him. In the future, lawyers and the private bar may attempt to restrict the provision of legal services under the title III program. I hope that this case will always stand as a reminder to Congress to resist such pressures.

Before concluding I would like to mention two other areas which, I believe, deserve more attention if the elderly are to receive high quality legal services.

A major deficiency at this time in the field of legal services for the elderly is the lack of training materials and courses for lawyers and paralegals. Law schools provide virtually no background in aging or in substantive areas of law pertaining to the elderly—the most obvious area being the programs under the Social Security Act. Few colleges or universities offer specialized courses for lawyers or paralegals serving older persons. As far as I am aware in New England, only New Hampshire has used title IV–A Older Americans Act funds for paralegal training. As a result, each legal service program for the elderly must reinvent the wheel whenever it trains new lawyers or paralegals to work with the elderly. And, persons who wish to become trained paralegals or social workers who wish to develop a better knowledge of how to use the legal system for their clients are confronted with nowhere to go to receive this information.

Just as our LRSE project has received many requests from the elderly law projects to fill this training void, we have received numerous requests to serve as a regional elderly law backup center. The problem, simply stated, is that lawyers handling 300 to 350 cases a year and also administering legal projects for the elderly do not have time to keep abreast of all the new laws and cases relating to the elderly and to do detailed legal research on more than a few areas of law each year. As a result, the representation available to older persons is not always as excellent as it could be. Elderly law backup centers in each region of the country—possibly established through Older Americans Act model project funds—could begin to fill this gap.

A good example of such a backup center is the SSI Advocacy Center, attached to the Massachusetts Law Reform Center which specializes in handling SSI cases in Massachusetts. The SSI center handles an average of 50 to 100 SSI cases per month and handles only SSI cases. As a result of this specialization, the elderly served are certain of quality representation, and secondly, other lawyers and paralegals throughout the State may call upon the center's staff for backup on their own SSI cases.

The SSI center has operated for over 2 years with title III administrative funds as a project of statewide significance. As successful as it has been, the Massachusetts Department of Elder Affairs will not be able to refund it this year because it has no funds available for this purpose. As a result, the SSI center will have to close its doors to the elderly on September 30 of this year. I don't know if there is anything you can do, Senator, to help the SSI center to continue, but I hope that you will try.

Even if you cannot help the SSI center, I believe that its success underscores the need for backup centers of its type.

Thank you very much, Senator.

Senator KENNEDY. At this time I would like to recognize Linda Noconiam, who is representing Congressman O'Neill; Fred Rose, who represents Congressman Early; and Ed Moore, representing Congressman Burke.

All of the House Members are voting today on the Supplemental Security Income Reform Act to insure cost-of-living increases in SSI. If there is such a thing as a good excuse, they have it today. [Applause.]

Now, we are going to hear, if we could, from Emily Murphy, then from William Cohen, and then from James Frost. We shall give them a minute each—if they would just like to step up here. We have the reporter here. Each is entitled to—I'm just sorry on the time. I have to get on back. We are having an antitrust bill that is before the Senate. It will give the State attorney general the power to bring an antitrust action when the individual harm is only a few dollars, but the total sum in terms of the consumer is $20 million, $30 million, $40 million.

There is a filibuster on this afternoon, and the Judiciary Committee is trying to break it. We will be voting on it tomorrow, but we will be debating it this afternoon. It, too, is an important bill for the elderly. As I have to take a 12:15 plane, I am going to have to leave here in about 5 minutes.

Emily, we will give you a minute. And any of the rest of you that would like to have a comment or statement made a part of this record, we will leave the record open for 30 days. Just write me a note and it will be included in the record. OK, Emily.

STATEMENT OF EMILY M. MURPHY, NORTH ANDOVER, MASS.

Ms. MURPHY. Senator, it's a pleasure to meet you, and I want to thank you for all the efforts. Especially our senior aid program. We in North Andover have a town that very seldom needs anything, but the council on aging is very active, and we are mostly all volunteers, and a year ago we had quite a confrontation with the board of health, because we wanted to have a clinic for the elderly which we had started and it was for 2 years with volunteers, and we needed some money, and, of course, there was a definite denial. So, we went to the Legal Aid through the home care program in Lawrence, Merrimack Valley Home Care, and through their efforts and our own constant communication, the program was very well resolved and we have a wonderful clinic that handles something like 400 people in 2 or 3 months. So, that is one of our own experiences with Legal Aid.

The other little note I have here, according to lawyers, I think that publicity of some kind would result in having volunteers.

Senator KENNEDY. That is good. Very good, Emily. William Randolph Cohen.

STATEMENT OF WILLIAM RANDOLPH COHEN, BOSTON, MASS.

Mr. COHEN. Senator Kennedy, my full name is William Randolph Cohen, and I am the Massachusetts department junior vice commander, Sons of Union Veterans of the Civil War. I sent you a letter by certified mail on July 24. Not knowing what happened to that letter, I visited your office in person a little over a week ago. I found out that that letter was turned over to Samuel Thompson of the Boston Housing Authority.

He sent back a response to your office. The original was supposed to come to me, but it never came to me. I was given a copy of that letter and the response to that letter was all out of line with that letter that I sent you.

Senator KENNEDY. Let's try to follow up. I will be glad to try and follow up with you, and will do so. And I want to commend you for

your role as junior vice commander, Sons of Union Veterans of the Civil War.

Mr. COHEN. Also I sent you a letter on the 21st asking for copies sent from your office or anybody else. I am the only truly registered commander of the Massachusetts department of veterans of the Civil War, and I am trying to do things for senior citizens, like myself, who live on a fixed income. I live in the Boston Housing Authority community.

As you have already been told by Gerald Wall, the rents are being increased enormously. The Boston Housing Authority, I understand, can go up to 25 percent of our income, and that would put a cramp in the $288 which is received from SSI, and that leaves us with very little to live on. It is hard to live for senior citizens, or anyone else, with food and clothing and telephone and other necessities of life. I have appealed to you and to Senator Brooke to take steps to change the legislation on that amendment to lower the 25 percent to say 12½ percent. Fifteen would be OK, too.

Senator KENNEDY. Let me ask you, Mr. Cohen, could you go down right after this meeting to my office—I have to go right back to Washington—but if you see Barbara Soliotis at the door there, and we'll arrange a meeting for you with Dave Wynn. Let's get busy on this. I have some good attorneys up here that will help me if I have any problems. I want to just give two people a final chance to talk, but see Barbara and we will set something up right away, if you would be kind enough to do that. I regret and apologize if we haven't been able to be as responsive as we would like, but I give you assurance that we will do our very best. I want to thank you for commenting. OK, James Frost. Jim, I will give you about 45 seconds.

Mr. FROST. We have submitted our written testimony, Senator.

Senator KENNEDY. Very good. Your statement will be entered in the record at this point.

[The statement of Mr. Frost follows:]

STATEMENT OF JAMES FROST, COMMISSION ON AFFAIRS OF THE ELDERLY, BOSTON, MASS.

Mr. Chairman and distinguished members of the panel: My name is James Frost, and I am here today to speak on behalf of the city of Boston Commission on Affairs of the Elderly. As you may know, Boston has approximately 120,000 persons age 60 and over. This is a large group of people and one that certainly deserves every legal consideration and benefit.

Older persons as a group seem to be subject to legal problems, particularly given their increased dependency upon Federal, State, and local programs, each of which has its own particular regulations and restrictions. A reliance upon public agencies for housing, transportation, health care, and income maintenance, too often creates a corresponding submission to rigid eligibility standards, complicated reporting forms and confusing and misleading procedures and regulations. Without being overly dramatic, an elderly person's fate can sometimes literally be determined by his or her ability to wade through a plethora of application forms, income statements, and so on. This bureaucratic maze does at times seemingly preclude an individual from obtaining the benefits that are legally his.

Mr. Chairman, I am sure that you are aware of the fact that many elderly persons suffer because of their inability to deal with the public and private agencies obligated to respond to their needs. The Boston Commission on Affairs of the Elderly would, therefore, be happy to support any and all efforts that can be made to alleviate legal problems for our senior citizens, particularly in the following areas of need:

(1) *Housing.*—Recently, many of us witnessed the frustrations of Boston's elderly housing residents who were faced with proposed rent increases. This is just one example of the type of housing issue that would lend itself to legal intervention.

(2) *Income maintenance.*—We are all aware of the many problems beseiging social security and supplemental security income recipients. Many times elderly persons are not aware of deserved benefits or, perhaps even more important from a legal point of view, the various appeal systems open to them. Competent legal assistance in this regard could be the critical difference in determining a recipients income.

(3) *Medical care.*—Even the most experienced and sophisticated reader is often confused trying to interpret private insurance plans and policies, let alone the complex medicare and medicaid programs. One hopes we have not reached the stage where it takes a lawyer to determine medicare eligibility but, unfortunately, that day may not be too far off.

(4) *Employment discrimination.*—The Federal Age Discrimination in Employment Act of 1967 bars employees from denying job applications or dismissing employees solely because of age. This act has not been vigorously enforced and, unfortunately, is not well known by many employees or older persons. Legal aid and assistance may be necessary to bring employers into compliance with provisions of the act.

Mr. Chairman, I could go on. There are many other areas of need unique to elderly persons. Almost all of them require trained and sophisticated legal intervention and assistance.

The American Bar Association has determined that 23 percent of all Americans have a civil legal problem at least once each year. One would hazard the guess that this percentage is even higher for our senior citizens, particularly the elderly poor. Thus, we feel safe in saying that thousands of elderly persons in Boston need efficient and meaningful legal services, hopefully of the type that can be made available for little or no cost. This latter point is imperative in light of the high incidence of poverty amongst so many of our senior citizens.

We would hope that the members of the Special Committee on Aging and the full Congress respond to the problems I have mentioned here today. Boston deserves nothing less than the very best effort that can be brought to bear by the Congress to address the legal needs of our senior citizens.

Thank you for your time and consideration.

Senator KENNEDY. Here's a wonderful note: "If possible, I would like to testify, very briefly, honest. Norma Walsh Gramer." How can I say "No"?

STATEMENT OF NORMA WALSH GRAMER, BOSTON, MASS.

Ms. GRAMER. I understand. Thank you very much. OK. My name is Norma Walsh Gramer. I'm a member of the State advisory for the elderly, the ABCD board on the elderly subcommittee, and mayor's, you know, the whole thing. I am interested. I am concerned. I care. I just wanted to say we appreciate all of you coming down. It's good to have sincere people looking out for the elderly. And I am in strong favor of expanding legal services for the elderly. The point I can tell firsthand, when I worked with the commission on affairs of the elderly in the city of Boston. All of you know that elderly don't want to tell everybody their business. They don't want to let everybody know what is happening.

In my capacity in city hall, they quite often had legal problems, and I would refer them to the local BLAP office, but they were hesitant because they didn't feel as though the lawyers there would have the sensitivity. With specifically geared programs for the elderly there will be more help, and we thank you very much.

Senator KENNEDY. All right, that is very good. Now, there will be some forms right down here. They are all addressed, and if you didn't have a chance to speak today and you would like to, just fill that out. Write on the back of it. You can fill out another couple of pages if you would like. Give your name on the bottom and then we will make that a part of the record.[1] We try to make it easy. Just take it with you.

Now, just a final point. We are going to fight the reduction of funds for legal service. The administration has requested the reduction of money. We have already appropriated the money, and we are going to make every effort to defeat the administration request to cut back the Legal Service Corporation. We want you to know that. I am sure the Congressmen will be talking to you, if you are in their areas, about that in particular. We will also work on earmarking funds for the elderly in the appropriations made to the Legal Service Corporation.

Third, we want to work for mobile legal service units and for more units permanently located where large numbers of elderly reside, staffed by paralegal aides.

POSSIBLE FEDERAL AND PRIVATE ACTIONS

We have talked a little bit about the private bar. I will ask other members of our committee to join me in requesting their cooperation in providing legal services for the elderly, and in requesting a response from them, indicating what they have already done. I think, in the areas where it has been good, the people ought to know about it. I am sure there have been many instances where there has been superb service, and we ought to know about it, as well as where the service has been inadequate.

We will also explore problem areas with the LEAA, the Federal Government's principal instrument for providing assistance to State and local communities. One of the things we didn't explore very thoroughly today is the relationship of senior citizens and the problems of crime. I think that there are areas in which LEAA can provide some additional resources to help protect the elderly.

The Senate will also be working on the passthrough provisions, which the House is acting on today. We will explore some legislative solutions to assure adequate notice for housing residents, and to prevent entire social security increases from being eaten up by rent increases alone. There are opportunities for action at the Federal level. This ought to be an area of priority, and we will work with you and your groups, your State groups, your local groups, and national groups to gain support for these legislative actions.

As a result of the hearing we had 5 years ago, we were able to spark some movement. It is still not nearly enough. We have talked about Boston and Massachusetts and New England being ahead of some parts of the country, but we have also heard about how far yet we have to go. I want you to understand my full commitment to this program.

This is something I am interested in. I know you are. I appreciate your patience and your sharing with us during the course of this hearing your own concern for your fellow citizens. The committee stands in recess. Thank you, very much. [Applause.]

[Whereupon, the hearing was adjourned at 11:40 a.m.]

[1] See appendix 3, p. 201.

APPENDIXES

Appendix 1

STATEMENTS FROM INDIVIDUALS AND ORGANIZATIONS

ITEM 1. STATEMENT OF DOROTHY KING, ASSOCIATE DIRECTOR, SSI ADVOCACY CENTER, BOSTON, MASS.

The SSI Advocacy Center has assisted the elderly and disabled and their advocates with supplemental security income (SSI) for over 2 years. My comments and suggestions concerning the legal issues of importance to them draw on this experience.

If the SSI program is to fulfill its promise to provide direct and simple income maintenance to the needy elderly, much change should be made in its current substance and procedure. I will briefly discuss several of the areas which are of particular importance to elders and which are ripe for litigation or legislative change.

Delay.—The application process for an elderly person can be full of delays and inefficiencies. It can take several months for the district office to verify income, resources and household expenses. Except in a few areas, like Cambridge, where case law has enforced a 45-day time limit for processing applications (*Santos* v. *Weinberger*, No. 75–166G, D.C.MA), there is no statutory or regulatory time within which the Social Security Administration must act on a claim. The hardship which long delay causes can be alleviated by litigation forcing a reasonable time limit construction upon the statute and regulations. I also recommend legislation to establish a 30-day time limit for processing nondisability applications for SSI.

Nonreceived, Lost or Stolen Checks.—When through a computer error, a postal error or otherwise, an SSI recipient does not receive a regular monthly check, the computerized procedure for a replacement takes so long that recipients lack the essentials of daily life. Pursuant to Federal litigation, the Boston Region of SSA made a study of checks not received, lost, or stolen before negotiation. Of those cases where a substitute check was issued, the report noted that it took from 8–18 days after the recipient reported the case before she or he received a check. A 3-week wait for a check which represents a minimal income supplement can easily place the life of an elderly person in jeopardy. Our office and the Chelsea-Revere legal services office have brought a mandamus action against the Social Security Administration and the Department of the Treasury requesting that the court recognize an obligation to issue checks immediately to those recipients. *Moore* v. *Mathews*, D.C. Mass. No. CA–75–2555–T.

It is recommended that the district offices have prewritten checks available for the immediate replacement of their nonreceived, lost, destroyed, or stolen checks. The SSA itself, in the report mentioned above, suggested the use of the district office imprest funds to replace checks. Legislation should also be drafted requiring the local offices to arrange for the replacement, within 3 days of reporting, of checks lost or stolen before negotiation, or never received.

Resources.—The Social Security Act allows a person to be eligible for SSI only if their home is valued below an amount "the Secretary determines to be reasonable." 42 U.S.C.A. § 1382b(a)(1). The Secretary's determination is that any person is ineligible for SSI who lives in a house valued at over $25,000, 20 C.F.R. § 416.1216. In the low and moderate income neighborhoods of the northeast, houses are often if not always valued at over $25,000; thus, many individuals otherwise eligible for SSI receive no benefits. The $25,000 upper limit, although reasonable

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in many sections of the country, operates in a very discriminatory manner in urban areas with a high cost of living. The regulation forces the elderly to choose between their homes and the minimal SSI benefit.

The reasonableness of the Secretary's determination should be challenged at the same time legislation is introduced directing that the Secretary establish upper limits for the value of homes which reflect the current market values of low-income homes in various areas of the country.

Imposition of a 6-Month Rule on Eligible Couples.—The so-called "6-month rule" provides that two eligible individuals who have previously resided together as husband and wife, and who have not been separated for 6 months, shall be considered to be an eligible couple for SSI purposes (42 U.S.C. § 1382c(b)). That means they receive a lower benefit and have their income counted in a less advantageous manner to determine eligibility and benefit level.

I can think of no justification for the requirement that two individuals who have ceased to live together shall be considered to still be living together for a 6-month duration. The financial burden this imposes on two eligible individuals is considerable. Because the spouse's income is deemed to the eligible individual even *if it is no longer available*, the financial burden imposed is cruel and unconscionable. A not uncommon situation encountered by advocates in this State is that in which a husband disappears with the couple's savings, leaving the wife with no source of income save her half of the couple's benefit, about $204 per month. If one member of a couple is forced into an institution, the other member has the full burden of supporting her or himself on the couple's grant for 6 months. If the institutionalized spouse has other income than SSI, it lowers the couple's SSI grant, only half of which the noninstitutionalized spouse receives. The spouse in a nursing home may need all of his or her social security and SSI to pay the nursing home, leaving his or her spouse with a pittance.

I recommend the elimination of the "6-month rule." Eligible individuals no longer residing in the same household should be entitled to receive benefits computed on an individual basis, beginning with the month after the month of separation.

Representative Payee.—Under the statute and regulations, social security has broad, discretionary powers to appoint and select a representative payee for an SSI recipient. 42 U.S.C. § 1383(a)(2), 20 CFR § 416.601(a)(1). There are no specific guidelines for the agency in the selection of a representative payee, other than that he or she evidence interest or concern. See 20 CFR § 416.610. Once the decision to make representative payment has been made, there are no specific guidelines regulating the conduct of the representative payee, and no enforceable remedies if the payee is determined to have misused benefits.

The decision to make representative payment is made solely at the discretion of the district office, as is the selection of the representative payee. The recipient is afforded no prior hearing in which to raise objections, if any.

The constitutionality of this denial of personal and property rights without a prior hearing is ripe for litigation. I also strongly urge legislation which would (1) require an impartial hearing *prior* to the decision to have a representative payee appointed, (2) establish guidelines for qualification as a representative payee, (3) require periodic written reports accounting for payments certified to the representative payee, and review of the necessity for representative payment, (4) establish enforceable penalties for misuse of benefits on the part of a representative payee, and provide for enforceable methods of restitution of misused benefits, and (5) require immediate issuance of duplicate checks in cases where funds have not been used for the benefit of the recipient.

Conclusion.—All the SSI problems outlined above can be alleviated by legislative action. If the changes are made, it will be possible to avoid the lengthy and costly litigation involved in challenging the practices and procedures of the Social Security Administration. I have recommended a few important changes. Several other problem areas which I have not had time to touch upon are: inadequate notification of termination and reduction of benefits, inequitable deeming of a spouse's income, reduction or termination of benefits upon temporary institutionalization, coercive methods of recouping innocent overpayments, and unrealistic liquid resource limitations.

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ITEM 2. STATEMENT OF LEWIS M. LEVENSON, EXECUTIVE DIRECTOR, SOMERVILLE-CAMBRIDGE HOME CARE CORP., SOMERVILLE, MASS.

Mr. Chairman, I am executive director of the Somerville-Cambridge Home Care Corp., a nonprofit corporation with local management responsibility for elderly services available under titles III and VII of the Older Americans Act and title XX of the Social Security Amendments.

We are entering the third year of a subcontract relationship established with the Cambridge-Somerville Legal Services, Inc., to provide access to appropriate legal services by the elderly in our area. Title III funds made available to us through the State's Department of Elder Affairs have been used for this purpose.

Our experience of the last 2 years has demonstrated that legal services for the elderly clearly perform two different functions: subsidization for personal legal services needed by the elderly poor, and class action advocacy proceedings necessary to protect the elderly from administrative restrictions imposed on other groups.

The needs of any local area—and Somerville-Cambridge is no different in this regard—far exceed the ability for those needs to be met through present or foreseeable levels of funding for title III. Local pressures must therefore tend to push aside the class action function when allocating the basically inadequate funds to local services. Yet the broad issues of society which can be resolved through class action advocacy clearly is an investment in the future with a very high cost-benefit effectiveness ratio.

We are also designated as an area agency on aging and are therefore most conscious of and sensitive to the conflict between local priorities and issues which transcend the local area for benefit, but must be funded through diverting funds otherwise available for more directly visible benefit.

Legislation to create a separately funded title within the Older Americans Act to address the class action advocacy situation would remove pressure from the local areas that is not fair or appropriate for them to be subjected to. The most appropriate linkage would suggest funding to the area agency on aging level to ensure a close working relationship with the range of service providers in that area and thereby assure a comprehensive and integrated recognition of problems and development of solutions. Elderly residents of other areas would benefit through the formal reporting linkage between the area agency and the State agency, as well as the less formal communications network between area agencies, and that among legal service programs.

In other words, funds expected by the Congress to be directed toward the legal service concerned with responsible class action advocacy should be distributed outside any state allocation formula otherwise used for title III.

Such legislation would permit the proper development of the reservoir of awareness, skills, and cooperative interagency working relationships that can effectively provide a focus of the energy needed to make progress. Without such legislation, we must be concerned that there is little incentive to take such elderly issues seriously. The tendency otherwise is toward inadequate funding of available services, compounded by the reality that a sizeable chunk of that inadequate funding must be spent simply to bring the legal staff on board as to the elderly issues.

ITEM 3. STATEMENT OF PATRICIA A. CANTOR, MANAGING ATTORNEY, COUNCIL OF ELDERS LEGAL SERVICES PROGRAM, BOSTON, MASS.

I am managing attorney of the Council of Elders Legal Services Program (COELSP) a legal assistance project for low income elders in Boston. We are funded by a grant from the Legal Services Corporation and operate as a cooperative undertaking of the Council of Elders, an elders' social service agency, and Greater Boston Legal Services. The office consists of four full-time lawyers, one full-time and eight half-time paralegals, and two secretaries. We provide a full range of legal services for seniors with civil, nonfee generating cases. We conduct an active outreach program to inform elders of the availability of the service and to encourage them to use it.

LEGAL PROBLEMS OF THE ELDERLY

Low-income elders have many of the same problems as low-income younger people. Yet, these problems are frequently compounded by the older person's lack of mobility and frailty.

For example, a typical case involves someone who is being threatened with eviction. Usually the elder is in ill health, has occupied the apartment for many years and is totally surprised and unprepared for dealing with the problem. The case becomes even more difficult because often people are afraid of exerting their rights. Our program works very hard to provide social service support, especially through our connection with the Council of Elders, while fighting the eviction on legal grounds.

The most frequently encountered problem involves housing, rent increases, evictions, and unsafe conditions. Because of the high cost and poor condition of most of the housing occupied by our clients, people are unable to obtain suitable accommodations at rents they can afford to pay. Social security and supplemental security income issues comprise another large segment of our caseload. These include denials of applications, alleged overpayments and other irregularities in receiving checks. We also see many people with consumer problems; and we do estate planning. Nursing homes are a growing concern and we are seeing increasing numbers of clients in that area.

ROLE OF LAWYERS AND PARALEGALS

Experience has demonstrated that older paralegals teamed with generally younger attorneys is an extremely effective way of serving the elderly. The combination enables us to provide high quality services, build rapport with clients, and strengthen the overall program.

Paralegals function under a lawyer's supervision and are actively involved in all aspects of cases. They do initial intake interviewing; prepare papers for hearings; do factual investigations and negotiate on behalf of clients. They also carry the bulk of our outreach effort.

Lawyers handle the more complicated problems and, of course, all of the litigation. They also participate in on-going training of paralegals in substantive areas of law.

Both paralegals and lawyers working together deliver a total client-service package.

ARE THE NEEDS BEING MET?

Presently, Council of Elders Legal Services Program is the only agency in Boston that is focusing on the legal problems of the elderly poor. We are trying to cover the entire city with relatively few resources. So far, I believe we have been very effective at beginning to make a dent on the problem. However, the need far outdistances our ability to meet it.

In order to adequately fulfill our responsibility to serve all needy elders, Greater Boston Legal Services has prepared a proposal for funding an expanded program under title III of the Older Americans Act. The proposal has been submitted to the area agency on aging and we are waiting for the outcome.

ITEM 4. STATEMENT OF THOMAS CASEY, COMMUNITY SERVICES COORDINATOR, MERRIMACK VALLEY HOME CARE CENTER, INC., HAVERHILL, MASS.

For the purposes of this hearing, I am representing both Merrimack Valley Home Care Center, Inc., and Merrimack Valley Legal Services.

It is our joint opinion that the elderly, due to their unique legal needs, are being, to an extent, neglected under the current legal services structure in the Commonwealth.

An attorney must acquire a certain sophistication in dealing with the legal problems of senior citizens. Due to increasingly large caseloads most attorneys employed by the Legal Services Corporation, in Massachusetts, are prohibited by time factors from acquiring this sophistication.

We would be very quick to point out that this is not due to a lack of desire or ability, but we would stress the *time* factors involved.

Merrimack Valley Home Care Center, Inc., and Merrimack Valley Legal Services have submitted several joint proposals for legal services for the elderly consumer. These funding sources include:

A. National Senior Citizens Law Center.
B. Department of Commerce, Title X.
C. Massachusetts Commission for the Blind.
D. Office of Manpower Affairs.

Due to funding limitations on the part of these sources there is no flexibility for the separation of legal services so that elderly problems can be addressed separately.

An argument could be made that legal services is a priority under title III of the Older Americans Act. But so is transportation. If any local area agency is striving for a viable transportation system, the majority of their funds would, because of cost factors, be pretty well designated to a transportation priority.

Specific service requests that would be geared mainly to senior citizens and have had some difficulty being negotiated would include, wills, guardianships, estate planning and the whole area of social security, Blue Cross-Blue Shield benefits. It is unfortunate that senior citizens, by virtue of their age, have such unusual legal problems. This facet is compounded by the fact that these problems arise when their emotional, physical, and financial resources could conceivably be considered to be at a low ebb.

It is the joint opinion of Merrimack Valley Home Care Center, Inc., and Merrimack Valley Legal Services that the Older Americans Act be amended to include a separate title to deal specifically with the legal problems of the elderly consumer.

Appendix 2

LETTERS FROM INDIVIDUALS AND ORGANIZATIONS

ITEM 1. LETTER AND ENCLOSURE FROM WALTER H. CROSS, SUPERVISOR, SENIOR VISTA VOLUNTEERS AND PROGRAM FOR LEGAL SERVICES; VICE PRESIDENT, MASSACHUSETTS ASSOCIATION OF OLDER AMERICANS, INC., BOSTON, MASS.; TO SENATOR EDWARD M. KENNEDY, DATED AUGUST 31, 1976

DEAR SENATOR KENNEDY: For the past 9 years I have worked with and for senior citizens in Massachusetts.

As supervisor of a senior volunteer program, sponsored by the Massachusetts Association of Older Americans, and funded by ACTION, the Federal umbrella agency for all Federal volunteer programs, we are all too familiar with the many problems of the elderly population.

One-third of all older Americans are below or hover at the poverty line.

The average single senior citizen has approximately $75 a week to live on and the average couple about $105 per week.

Twenty-five percent of all suicides in the U.S.A. are committed by people over 65.

This segment of our population are living in constant fear and without hope.

Legal representation, except for very isolated cases, are nonexistent. This segment of the elderly population is unable to recognize when legal assistance can be utilized and unable to obtain it if they do. Due to barely existing on their poverty income, the idea of using existing legal services is never considered.

To even begin to provide legal services for the elderly, a network of communications with the elderly should be established to advise them of the availability of such services. In my opinion this could be accomplished through local councils on aging, community action agencies, and other nonprofit agencies that are servicing the elderly.

I have serious doubts that this should be administered through the State Department of Elderly Affairs, but rather through a nonprofit statewide agency with a proven track record of reaching out and acting as advocates for the elderly.

Seniors who have been involuntarily retired should be trained to act as paralegals. The senior volunteer program has proven that the elderly will more readily communicate and confide with members of their peer group.

One of the most valuable services legal services could perform would be to work within the framework of the many categorical programs available to assist the elderly. These programs are a nightmare of complex eligibility requirements, and thousands of seniors are not participating even though eligible, due to lack of knowledge.

I regret that I was unable to attend the hearing. However, looking at the agenda, I think that my testimony in written form can supplement the oral testimony already provided.

Attached are recommendations for legislative proposals to eliminate many of the inequities in the supplemental security income programs, which if adopted, could help thousands of the low-income elderly.

Also, the amendment to H.R. 8911 offered by Representative Richard L. Ottinger to "increase SSI benefits to reflect certain expenses," namely to furnish to eligible individuals housing expense assistance whose housing expenses exceed 33⅓ per centum of his or her annual income, the benefit otherwise payable under this title, section 17, part A of title XVI of the Social Security Act, shall be increased by an amount determined at a rate which is the lesser of "(1) $600 or (2) the amount by which such individuals annual housing expenses exceed 33⅓ per centum of his or her annual income."

Also enclosed is a copy of a letter* to the writer, which is self-explanatory, and is evidence of the value of the new SSI ombudsman office in Boston, which was established through your efforts.

Mrs. Thompson was most happy to permit the use of her name. She did call me William instead of Walter but otherwise it is very gratifying for all concerned to receive appreciative acknowledgement of the value of this office.

It also emphasizes the problem of obtaining efficient service from many social security offices since the inception of SSI in January 1974.

Sincerely,

WALTER H. CROSS.

[Enclosure.]

The following are legislative proposals to improve SSI administrative and operational functions and to improve the lives of SSI recipients. Some of them have costs while others have savings or no cost. Many have excessive paper work.

EXCLUSION OF CERTAIN RESOURCES IN DETERMINING SSI ELIGIBILITY

Exclude the value of a home, automobile, and household goods and personal effects in determining the amount of resources for purposes of determining SSI eligibility.

Our letter dated June 22, 1976 referred to H.R. 8911 and the catastrophic result of the current practice of some social security district offices reevaluating homes of the elderly using 100 percent assessment ratio, even though the individual town uses less than 100 percent. *Time is of the essence* regarding the immediate correction of this inequity in order to enable thousands of seniors to remain in their homes.

RETROACTIVE SSI PAYMENTS

Exclude from assets SSI retroactive payments beyond 45 days from the date of application.

Example.—Mrs. E. F., Newton, Mass., applied for SSI, February 1974; declared eligible, February 1975; received retroactive payment of $1,300 February 1975; deposited check in the bank which brought her assets to $2,300. Notified by social security in July 1976 that assets were over the $1,500 limitation in 1975 so her SSI would be terminated. At the time of this notification of termination assets were under $1,500 as purchased furniture in February 1976.

She was never notified that this $1,300 retroactive payment would be declared as assets if deposited in bank. If she had received her award 45 days after filing application she would never had $1,300 to deposit.

This was caused by negligence of social security district office and again retroactive payments beyond 45 days should be excluded from assets.

ONE-THIRD REDUCTION

Eliminate the provision for reducing the benefit standard by one-third for living in another person's household. This is penalizing OA–SSI recipients living in the household of another approximately $54.75 monthly income.

INTEREST AND DIVIDENDS

Exclude from countable unearned income, interest and dividends from resources that an individual owns when determining an individual's eligibility and SSI monthly benefit amount. This is a program simplification proposal designed to eliminate the need for making monthly redetermination of eligibility or benefit changes based upon small changes in unearned income.

Under the current SSI program, even though maximum assets allowed are $1,500 for an individual and $2,250 for a couple, the maximum monthly interest at 5 percent would amount to $6 and $9 respectively. However, this category of client comprises not over 10 percent of SSI recipients. The vast majority have at the most bank accounts of not over $400 with monthly interest of about $3.

To determine the exact amount and deduct it from monthly SSI checks is costing the social security district offices for excess paper work and labor an estimated $7 to $10 for each client. Also, it is contributing to the backlog of

*Retained in committee files.

unprocessed claims by utilizing labor time that should be devoted to more important problem. As a matter of fact, many social security district offices are straining their operational capabilities by trying to enforce this regulation.

Amendments to reduce the administrative burden of the Privacy Act.

With respect to the Privacy Act, there is need for legislative changes in a number of areas such as the scope of the present provision for accounting for disclosures and the requirement that a record of disclosures be maintained for five years or the life of the record whichever is longer. Excessive paper work with considerable cost has been the result of the implementation of this act.

ASSISTANCE NOT TO BE COUNTED AS INCOME

Do not count as income for SSI purposes payments including vendor payments based on need in supplementation of SSI by public agencies or private nonprofit charitable agencies.

ITEM 2. LETTER AND ENCLOSURE FROM JAMES P. PISCIONERI, EXECUTIVE DIRECTOR, HOME CARE CORP., SPRINGFIELD, MASS.; TO SENATOR EDWARD M. KENNEDY, DATED OCTOBER 7, 1976

DEAR SENATOR KENNEDY: This agency was not able to attend your most recent hearing in Boston regarding legal problems of the elderly. In lieu of presenting specific testimony, I am enclosing a number of specific legal problem cases that elders have encountered in our planning and service area.

This Home Care Corp. has a title III contract for legal services with Western Massachusetts Legal Services. This contract has not been expanded even though the cases have become more involved and demanding. The agency has requested additional funds from the State agency, but they have not been forthcoming.

The program operates with one paraprofessional and local attorneys donate their time for court cases. It has been an effective program, but limited due to the funding. I hope these cases will assist the testimony provided at the recent hearing.

Sincerely,

JAMES P. PISCIONERI.

[Enclosure.]

LEGAL SERVICES CASE EXAMPLES

CONSUMER COMPLAINTS

Mrs. S., 81 years old, living in subsidized housing, a telephone customer for 50 years with no record of unpaid bills had her phone service cut off by the telephone company at the same time as she received her then overdue bill. Agreement was reached as to how this would be paid—phone company rescinded agreement—service restored when law suit was threatened.

SOCIAL SECURITY-SUPPLEMENTAL SECURITY INCOME

Mrs. S., an invalid was grandfathered in when the Federal Government took over from State welfare in January 1974. This account was not resolved at the correct amount for 8 months. There were erratic payments of odd sums from time to time with the excuse being the computer. Undue hardship was caused by this situation, such as unpaid bills making it necessary to apply to loan companies.

Mrs. B's husband passed away and she applied for SSI. Was told she was ineligible as she received income ADC for her granddaughter. Mrs. B.'s daughter gave us the above information. After several telephone contacts with social security, we were told no information could be given as why Mrs. B. could not receive SSI—explanation, confidentiality. We learned Mr. and Mrs. B. had been receiving SSI as a couple before his death. After his death she believed she needed to file as an individual which was unnecessary as the computer should have picked this up and ADC is not considered income. Our last contact was to the effect it was under advisement, but no information could be given to legal services as it would still be a breach of confidentiality. Mrs. B's daughter is to contact us as to whether information will be released to her.

Mr. E. has been receiving SSI of approximately $20 a month for nearly a year. He receives other small pensions which had been checked out before SSI payments started. Recently he has received notices from social security that he was ineligible. Another letter he had been overpaid, another letter stating he owed $239 in overpayment, more than he had actually received. We will check into this matter for him.

Mrs. Y. filed and was given SSI and a medicaid card. She made dental appointments and had her eyes examined for new glasses showing both the dentist and her optician her card also the fact she would be receiving SSI. The following month she was notified she was ineligible—then the next month she would receive SSI. All of this confusion caused our client to be hospitalized as she has a very bad heart condition. She was able to get her dentures and glasses and then SSI was cancelled.

HOUSING

Mrs. C. was living in substandard housing paying a rent of $125 a month. Rags were stuffed between the inside windows and storm windows to keep the cold air out. The ceiling paneling in the kitchen hung down in places about a foot. The bathroom walls were damp from leaks from other apartments and in flushing her toilet the water came down on her head. The ceiling had fallen in the hallway. All of this had been brought to the landlord's attention to no avail.

Case taken to housing court, judgment for our client and housing given to her immediately by order of the judge in Twin Towers.

Mr. and Mrs. U. had paid a deposit for an apartment, then found that water came into the basement and since Mrs. U. suffered with arthritis they could not take the apartment. The landlord was notified, but refused to return the deposit. Case taken to court—judgment in favor of our client—deposit returned.

Mrs. K. had been living in her apartment for a number of years and very happy until a new landlord came in and later refused to make any necessary repairs. Code enforcement inspected the house and gave the landlord notice. The landlord and his wife entered the client's apartment, became very abusive and raised her rent excessively. Our letter to the landlord stating the statute under harassment and the tenants rights has subdued the landlord for the present. Threatened court action was the deterrent.

Mr. and Mrs. M. had lived in this apartment for 12 years. Landlord could not afford to maintain this housing as formerly. The bank was foreclosing and they received an eviction notice.

The housing court gave Mr. and Mrs. M. a 6 months stay with 4 months (the last) no rent payments—this money to be used toward moving expenses and security payment in other housing.

CONSERVATORSHIPS

Miss T., an elderly person living alone in an apartment became incapable of taking care of her needs. Her money disappeared, she was found wandering in the street and later found in her apartment with gas jets on and unlighted.

We located a nephew who was willing to become conservator. Mrs. T. had been taken to Northampton for a few days. During that time we were able to go into court to get a few waivers and the nephew appointed conservator in one day.

Miss T. was later transferred to Municipal Hospital and the nephew made a final accounting to the court within 30 days.

Mr. D. had a conservator when we were called in for assistance. The conservator had most of our client's money for her own use and was neglecting Mr. D. to the point he needed daily attention.

We first received a restraining order against the conservator, then had her removed by the court as conservator.

The division of the blind requested us to have conservators appointed for three of their clients in nursing homes for the purpose of cashing their checks and rendering necessary services.

This turned out to be a lengthy procedure taking months in court to accomplish this request, so much so that one client, Mrs. B., died during this time.

Mr. T. and Mrs. H. have had a conservator appointed by the court.

INSURANCE

Mrs. Y. went to Florida for a short stay and also an elderly man who had roomed in her home for many years. While in Florida, Mrs. Y. took out insur-

ance for them both—a health insurance for Mr. C. and life insurance for herself. Later Mr. C. became ill and passed away. Mrs. Y. went through the necessary formalities which the insurance company required and received notice that no payments would be made nor a refund. Mrs. Y. had paid the premiums for 1 year.

Mr. C. passed away 3 months after the policy was taken.

Mrs. Y. came back to Springfield and requested our assistance. We looked over Mrs. Y.'s policy and it was felt there was an element of fraud—the insurance company was contacted with no results. The attorney general's office was contacted, who in turn contacted the insurance and the year's premium of $168 was returned to Mrs. Y. as there had been misrepresentation.

No refund was given in regard to Mr. C.'s policy—the Florida Insurance Commissioner stating "there is not a legal obligation for the company to refund the premium—cannot be apportioned in case the risk terminates before the end of the term for which the insurance was granted."

We were not in agreement but felt we had no alternative but to close the case.

Mrs. C. and Mrs. H. took out insurance policies with a company advertised in the paper. Mrs. H. told Mrs. C. her policy was for $1,000 at time of death and she would be the beneficiary so the funeral expenses would be paid. Mrs. H. died and Mrs. C. made funeral arrangements for that amount. The insurance company sent a check for the premiums which had been paid with interest which amounted to $354. The undertaker's bill was over $700 the cemetery over $300. Mrs. C. came to us greatly upset by this turn of events and she was in no position to pay the balance as she was just receiving social security.

The policy did have a clause, one had to be insured for 2 years, Mrs. H. passed away about 20 days too soon and there was an amount of $1,260 to be paid.

We were able to have the funeral home and cemetery to write off the balances.

FORECLOSURES

Mr. M. is considered legally blind has lived in his home most of his life, but in recent years could not work and was trying to live on a small amount from welfare. He was unable to pay on the mortgage the bank was going to foreclose—his real estate taxes was long overdue. He wanted to rent his house to American International College but they were not interested. We contacted the bank assessor's office and A/C for him. He was able to get the money to pay the interest due the bank and on his taxes. He is still living in his home, the bank has not foreclosed but it is imminent. It will be some time before any action will be brought. The value of the property is minimal.

SMALL CLAIMS COURT

Mrs. V.'s problem concerned a party fence which a neighbor removed. Mrs. V. had paid for a portion of this chain fence. The neighbor refused to return or pay Mrs. V. for her section. Threatened to build a wall which would infringe on our client's property and began a series of harassment. Small claims court found in favor of our client—defendant paid cost of fence and damages.

COLLECTION AGENCIES

Mrs. S., a blind client and her son who was an alcoholic lived in a subsidized apartment. The son did cause damage to the apartment and subsequently died. Mrs. S. went into a nursing home. The apartment owners formally requested payment for damages from Mrs. S. who was only receiving a small social security payment. It was then put into a collection agency. The collection agency agreed not to press for payment but write it off when we presented the circumstances.

Mr. L., a client, age 82, came into the office with his postman who from time to time would call on Mr. L. who lived alone was deaf and nearly blind to go over his mail which he occasionally received which looked important. An attorney who was acting as a collections agency for a large department was threatening Mr. L. with a court order for nonpayment of a bill of $68 which Mr. L. had forgotten about since it had been several months previously. We contacted the attorney who said suit would not be brought if the bill was paid, but would not write it off. Mr. L. will make small monthly payments.

Our housing attorney is working on a proposed draft lease for the elderly in public housing pertaining to double locks on first floor windows, better lighting and additional security officers. This is expected to be published by November 1976.

Wills have become a real necessity for the elderly whatever their possessions to give to friends, if no family, or to friends if family has neglected them—at least one a month.

Many elderly have recourse in the court but fear holds them back—(1) never have been in court—(2) fear of retaliation. This fear needs to be uprooted.

ITEM 3. LETTER FROM GERALD D. WALL,* STAFF ATTORNEY, COUNCIL OF ELDERS LEGAL SERVICES, BOSTON, MASS.; TO SENATOR EDWARD M. KENNEDY, DATED OCTOBER 14, 1976

DEAR SENATOR KENNEDY: On August 30 I had the opportunity to testify before your committee studying legal problems of the elderly. At that hearing I discussed the kinds of serious legal problems facing older persons that should be dealt with by legal services programs. I did not, however, testify as to how such programs could best be funded.

One method mentioned at the hearing for funding legal services programs for the elderly was through the Legal Services Corporation. This alternative was criticized by James Wechsler, director of legal services for Cape Cod and Islands in a letter dated September 15, 1976. The experiences of this office support Mr. Wechsler's opinion that additional, outside of the Legal Services Corporation, sources of financing legal services for the elderly are necessary.

At the present time, the major source of funding for this office is the Legal Services Corporation. However, it is inadequate to allow us to meet the needs of eligible elders in the area we are responsible for serving—the city of Boston. This is so because of the large elderly population in Boston and also because of the extra attention necessary to properly serve elders.

Other sources of funding should also be looked to because of the special needs of older persons. Many of those needs exist because of past governmental and industry policies which have in many cases stripped the older person of the will or of the means of dealing with the complexities of daily life.

In addition, the elderly poor often are the same persons whose productivity and creativity during their younger years resulted in the high standard of living enjoyed by many others today.

Because of these facts, the availability of effective legal assistance for the elderly must be insured.

This can only be accomplished by giving special attention to programs of legal services for the elderly and seeking new sources of financial support for these programs.

Thank you again for the opportunity to bring this to your attention.

Very truly yours,

GERALD D. WALL.

ITEM 4. LETTER FROM PAUL V. CASEY, SPECIAL COORDINATOR FOR ELDER SERVICES AND LEGAL SERVICES TO ELDERS, OLD COLONY ELDERLY SERVICES, INC., NORTH ABINGTON, MASS.; TO DAVID A. AFFELDT, CHIEF COUNSEL, SENATE SPECIAL COMMITTEE ON AGING, DATED SEPTEMBER 13, 1976

DEAR MR. AFFELDT: Pursuant to our conversation at Senator Kennedy's hearing on 'Legal Aid to the Elderly," I wish to advise you of our ongoing, innovative program of legal assistance to the elderly.

We are using a 15-passenger mobile classroom, which is owned by CETA in the city of Brockton, Mass. We have operated all summer in southeastern Massachusetts. We have secured the services of an extremely able attorney, Mr. Ryan

*See statement, p. 171.

of 11 Beacon Street, Boston, Mass. He is a semiretired attorney and has attracted a great and devoted following among the elderly of this section of Massachusetts. We believe our efforts are worthy of funding and would appreciate the help of your office. We realize that we have only until September 30, 1976, to request funding.

However, we feel that appropriate funds for such a project requiring paralegal training, additional attorneys, etc., would require funding in the sum of $200,000 to adequately serve the vast area and target population of elders in southeastern Massachusetts with its far above national average of indigent elders.

Sincerely,

PAUL V. CASEY.

ITEM 5. LETTER FROM EDWARD W. GORFINE, CHAIRMAN, COMMITTEE ON LEGAL SERVICES TO THE POOR, MASSACHUSETTS BAR ASSOCIATION; TO SENATE SPECIAL COMMITTEE ON AGING, DATED AUGUST 30, 1976

GENTLEMEN: The Massachusetts Bar Association welcomes the opportunity to express its members' support for elderly legal service programs throughout the Commonwealth of Massachusetts. This highly specialized area of law, dealing with social security, medicare and medicaid, nursing home and home care problems, deserves the strongest possible financial support from our Federal Government.

This organization is doing everything it can to educate its members in providing volunteer legal assistance to the elderly through its speaker's bureau, volunteer outreach advice and wherever possible representation in landlord and tenant matters; as well as to provide board membership on legal service programs throughout the Commonwealth funded to provide more intensive representation before administrative boards and courts of law.

Our membership will continue to review various programs and increase its volunteer efforts to provide sorely needed legal representation to the elderly.

Respectfully,

EDWARD W. GORFINE.

Appendix 3

STATEMENTS SUBMITTED BY THE HEARING AUDIENCE

During the course of the hearing, a form was made available by the committee to those attending who wished to make suggestions and recommendations but were unable to testify because of time limitations. The form read as follows:

DEAR SENATOR KENNEDY: If there had been time for everyone to speak at the hearing in Boston, Mass., on August 30, 1976, concerning "Improving Legal Representation for Older Americans," I would have said:

The following replies were received:

EDWARD E. ALESSI, BEDFORD, MASS.

I am making a statement relative to legal services for the elderly as a representative of L.I.F.E., Living Is for the Elderly. L.I.F.E. is an association of nursing home residents whose primary purpose is to improve their lives and the lives of other nursing home residents. We strongly feel that legal services should be made more readily available and accessible to older people especially the nursing home resident. It's a service that is very necessary yet can become rather costly if an individual has to pay for it him/herself.

The service should be brought to the home since our experience has shown that most nursing home residents will not go looking for a lawyer, and many are not aware of the kinds of service that a lawyer could provide to them. It would be important then to bring the service to the home via paralegals visiting homes on a regular basis to establish trust and rapport with both residents and staff and to identify the legal needs of people. This use of paralegals would allow the trained lawyer to make better use of his time. Why does a nursing home resident need a lawyer? Property settlements, wills, insurance, competency proceedings to insure the rights of the individual, financial matters, etc.

Lastly, there is a great need for protective services for nursing home residents, especially for the incompetent person, who in the eyes of the law, is viewed as competent. This person needs the protection of a guardian, conservator, or other person who would act on his/her behalf. We have found a sizeable number of nursing home residents who are not able to exercise their rights or use poor judgment yet are said to be competent. These people could thus be easily taken advantage of by others. We would also feel that similar situations exist with elderly in the community.

MARGARET GILMAN, BOSTON, MASS.

Because I had to take a neighbor to the Massachusetts General this morning, I was unable to go to the hearing this morning. I tried to write a few words while we were waiting for her appointment.

Personally, I have no complaints because the Council of Elders Legal Department located at 102 Norway Street, especially Mr. Phil Coles and Mr. McCusker have been very helpful whenever I have needed legal advice. Other elders also appreciate the promptness and cooperation of this branch of the Council of Elders.

When I asked people in other areas, however, I received some serious complaints. The most often mentioned "gripe" was that they often had to wait a very long time for results. The interviewers were often rude, suspicious, and

subjected people to lengthy cross-examinations. In fact, some people felt that the legal advisor was distinctly annoyed by having to defend the elderly.

Thank you for asking me to make this report. I am truly disappointed because I could not be there in the Gardner Auditorium this morning.

I am a Republican, but I feel very strongly that when an elected official supports such a good cause as honest and sincere aid to the elderly that we should all "go to bat" for it regardless of our political affiliations.

DANIEL MADIO, LAWRENCE, MASS.

I am with the Merrimack Valley Home Care Center. I am the director of the Senior Aides Program for that area, and I can assure you that it is a viable operation that has demonstrated its value to the elderly of the Merrimack Valley.

In their outreach work, the Senior Aides endeavor to determine the problems troubling the elders and assist in the resolution of those problems. Among the problems uncovered is the great need for legal assistance.

We do have in the Merrimack Valley a legal service available for the low-income elderly. However, their funding severely limits the amount of services available to these elders.

Because of this limitation, and the apparently expanding need for these services, I propose that consideration be given to a program that will train elders, who are seeking part-time employment and who wish to be useful citizens, to learn the very basics of law and in turn be assigned to para-legal services to do much of the spadework now required of any attorney, thereby relieving the attorney to perform the actual practice of law.

Furthermore, I can foresee the possibility of these elderly paralegals being employed by private industry—at industry's own cost—thereby creating jobs for the elders and at the same time hopefully reducing the cost of legal services to the elderly who would not qualify for the services because of income limitation through the present legal aid.

The paralegal program is not a new concept. There is presently one such program in Connecticut. It is my sincere hope and desire to initiate such a program for our Massachusetts elders.

I would be more than pleased to go into greater detail with any representative of your office.

GERTRUDE K. WEINER, BOSTON, MASS.

I am senior attorney of the Greater Boston Legal Services.

I have served in the area of legal assistance to the poor from 1932, specializing for many years in legal services to the elderly.

The legal needs of the elderly cover the same large areas that all people have, whether they are young or old. In addition, the elderly become special targets of oppression in the areas of housing and consumer fraud.

The elderly accept these impositions upon their legal rights without fighting back.

The elderly division of the Greater Boston Legal Services has been the fighting advocate protecting the legal rights of the needy poor of Boston.

The elderly poor of Boston number approximately 22,000, or 30 percent of the total elderly population of the city. With our limited funds we can only serve the tip of the iceberg.

We are the advocates who help secure the maximum benefits in social security, supplementary security income, welfare, medicare, medicaid, food stamps, and social services for the elderly.

We are the advocates who help to establish the need of the elderly for housing, and help secure housing for them at not more than 25 percent of their income.

We urge you to consider the expansion of these services so that legal assistance may be available to more of the elderly 22,000 people in Boston, rather than to just the tip of the iceberg.

ANNIE YOUNG, DORCHESTER, MASS.

Why go up on rent when we don't get any service. I have filled out a form over 2 years ago telling what needed to be done in my apartment. The baseboards are falling down and we don't have sufficient lights outside; and when we need lights in the halls sometimes it is as long as 2 weeks being repaired. It has been a month one time before we got a light in the back hall, it is bad enough when we have lights and still worse when we don't have any; we need all the lights burning on the outside. We elders are having it rough now; they have put drunks all around us and the young disability drunks, and they draw the young drunks from all over Dorchester and we can't rest day or night. If we want to sleep late in the morning we can't. At 5 a.m. in the morning they start coming in cars honking their horns and racing their motors and swearing and loud talking and if we call the cops they won't come. They will say someone will be right down but they never come. We don't know what it is to sit on the benches in the shade, for the young and old drunks have them occupied. When the drunks can call the cops they come. I called once and whoever answered hung up on me. They come sometime two or three times a day or night when they call. We don't have any protection whatsoever. When I moved here they weren't letting any in here but the elderly, but now anybody can move in. My apartment is leaking and the grass needs cutting, it has been cut twice this year.

ALFRED G. ZEMGALS, BILLERICA, MASS.

I would like to have asked how to enforce the senior aide's right to investigate elderly complaints without being refused information by some town agencies: Housing authority, Veteran's Administration, and welfare department.

Reference: Ombudsman Manual, Departus. Elder Affairs, Regulation #99–4–0009, Section c, point 3 and 4.